

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES EVERETT SHELTON : CIVIL ACTION NUMBER
PLAINTIFF :
VERSUS :
FCS CAPITAL LLC, ET AL. :
DEFENDANTS : 2:18-CV-03723

JACOVETTI LAW P.C., ET AL : CIVIL ACTION NUMBER
PLAINTIFFS :
VERSUS :
JAMES EVERETT SHELTON, ET AL :
DEFENDANTS :
VERSUS :
JOSHUA L. THOMAS :
MOVANT : 2:20-CV-00163

JAMES A. BYRNE U.S. COURTHOUSE
CONDUCTED VIA VIDEOCONFERENCE
WEDNESDAY, NOVEMBER 4, 2020
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE JOSHUA D. WOLSON, J.

EVIDENTIARY HEARING

SUZANNE R. WHITE, RPR, FCRR, CM
OFFICIAL COURT REPORTER
2609 U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106
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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1 THE COURT: MS. BUENZLE, YOU WANT TO OPEN
2 UP.

3 DEPUTY CLERK: LADIES AND GENTLEMEN, THIS
4 IS JUST A REMINDER THAT THIS HEARING IS BEING RECORDED.
5 WE DO HAVE A COURT REPORTER, MS. WHITE, WITH US TODAY.

6 UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF PENNSYLVANIA IS NOW IN SESSION, THE
8 HONORABLE JOSHUA D. WOLSON PRESIDING.

9 THE COURT: GOOD MORNING, EVERYBODY.

10 WE HAVE HAD SOME ADDITIONAL APPEARANCES
11 OF COUNSEL OVER THE LAST COUPLE OF WEEKS SINCE I
12 SCHEDULED THIS HEARING, SO WHY DON'T I, JUST SO WE HAVE
13 SOME CLARITY ON THE RECORD, TAKE APPEARANCES OF COUNSEL
14 TO START AND THEN I WANT TO COVER SOME HOUSEKEEPING.
15 THEN WE WILL GO FROM THERE.

16 SO LET ME START WITH -- WE HAVE GOT TWO
17 DIFFERENT CASES HERE WITH -- PEOPLE ARE SORT OF
18 POSITIONED DIFFERENTLY.

19 LET'S START WITH MR. SHELTON SINCE HE WAS
20 THE PLAINTIFF IN THE FIRST CASE.

21 MR. REO: BRYAN ANTHONY REO, ATTORNEY FOR
22 PLAINTIFF JAMES EVERETT SHELTON AND SHELTON FCS, NOTING
23 THAT HE IS THE DEFENDANT IN JACOVETTI LAW V. SHELTON.

24 THE COURT: OKAY. AND THEN I HAVE GOT
25 THE DEFENDANTS IN THE SHELTON ACTION. AND THAT WOULD BE

1 MR. -- WELL, I GUESS I WANT TO CLARIFY WHO IS
2 REPRESENTING WHOM.

3 BUT MR. ARTOM-GINZBURG, I WILL START WITH
4 YOU, TAKE YOUR APPEARANCE AND WHO YOU ARE REPRESENTING.

5 MR. ARTOM-GINZBURG: GOOD MORNING, YOUR
6 HONOR, LIONEL ARTOM-GINZBURG, REPRESENTING BARRY
7 SHARGEL, EMIL YASHAYEV AND FCS CAPITAL LLC.

8 THE COURT: AND THEN WE HAVE, I GUESS,
9 JUST FROM THE JACOVETTI ACTION, MR. SILVESTRO, IS THAT
10 RIGHT?

11 MR. SILVESTRO: THAT IS CORRECT, YOUR
12 HONOR, AND I WILL BE REPRESENTING MR. JACOVETTI
13 INDIVIDUALLY AND ALSO JACOVETTI LAW.

14 THE COURT: ALL RIGHT.

15 MR. THOMAS, GOOD MORNING.

16 MR. THOMAS: GOOD MORNING, YOUR HONOR.

17 THE COURT: I THINK THAT IS EVERYBODY.
18 DID I MISS ANYONE ON THE LINE WHO IS APPEARING AS
19 COUNSEL? NO?

20 OKAY. SO LET ME START WITH A LITTLE BIT
21 OF HOUSEKEEPING, AND I THINK WE JUST KIND OF AT LEAST
22 IMPLICITLY TOUCHED ON THIS. MR. THOMAS, I JUST WANT TO
23 BE CLEAR, YOU DON'T HAVE COUNSEL TODAY, IS THAT RIGHT?

24 MR. THOMAS: THAT'S CORRECT. THERE WAS A
25 DISCUSSION WITH MR. WEISBERG. HE CHOSE TO NOT CONTINUE

1 WITH HIS REPRESENTATION. SO THAT'S CORRECT, YOUR HONOR.

2 THE COURT: AND SO YOU ARE GOING TO
3 REPRESENT YOURSELF, THAT IS YOUR PLAN?

4 MR. THOMAS: CORRECT, YOUR HONOR.

5 THE COURT: OKAY. AND YOU UNDERSTAND
6 THAT -- I MEAN -- AND I WILL TALK ABOUT THE PURPOSE OF
7 THE HEARING SOME MORE IN A MOMENT, BUT THE PURPOSE OF
8 THE HEARING IS TO DEAL IN PART WITH A MOTION TO, I
9 GUESS, HOLD YOU IN CONTEMPT AND/OR SANCTION YOU THAT WAS
10 FILED IN THE SHELTON MATTER. YOU UNDERSTAND THAT,
11 MR. THOMAS?

12 MR. THOMAS: I DO, YOUR HONOR.

13 THE COURT: OKAY. ALL RIGHT.

14 SO LET ME TALK A LITTLE BIT ABOUT THE
15 PURPOSE OF THE HEARING. THE REASON I SCHEDULED IT IS
16 THAT THERE ARE FAIRLY SIGNIFICANT ALLEGATIONS THAT HAVE
17 BEEN MADE, IN MY VIEW, ABOUT MR. THOMAS'S CONDUCT IN
18 THESE TWO PROCEEDINGS, THE TWO PROCEEDINGS BEING THE
19 SHELTON MATTER WHICH IS -- WHEN I SAY THE SHELTON
20 MATTER, I'M REFERRING TO THE 18-3723 CASE AND THEN IN
21 THE JACOVETTI LAW MATTER, WHICH IS THE 20-163 CASE.

22 AND IN PARTICULAR, IN THE SHELTON MATTER,
23 THERE IS A JOINT MOTION FOR AN ORDER TO SHOW CAUSE THAT
24 WAS FILED. IT'S ECF NUMBER 103. AND I MEAN THERE'S A
25 NUMBER OF ALLEGATIONS IN THERE, BUT IN PARTICULAR WHAT

1 JUMPED OUT AT ME IS IN PARAGRAPH 7 OF THAT MOTION THERE
2 IS AN ASSERTION THAT AS OF JULY OF 2020 MR. THOMAS HAD
3 NOT TOLD HIS CLIENTS ABOUT THE JUDGMENT THAT WAS ENTERED
4 AGAINST THEM IN THE SHELTON MATTER, THE APPEAL THAT HE
5 HAD FILED ON THEIR BEHALF, THE SANCTIONS THAT HAD BEEN
6 ISSUED AGAINST HIM IN THE JACOVETTI MATTER, AND ALSO, I
7 GUESS, SANCTIONS THAT HAD BEEN ISSUED IN THE SHELTON
8 MATTER AND CONTEMPT MOTIONS -- HE HAD TOLD THEM ABOUT
9 CONTEMPT MOTIONS THAT HAD BEEN FILED.

10 THEN IN THE JACOVETTI CASE THE DEFENDANTS
11 IN THAT ACTION, WHICH ARE MR. SHELTON AND I BELIEVE
12 FINAL VERDICT SOLUTIONS -- WHICH IT'S NOT CLEAR TO ME IF
13 THAT IS A LEGAL ENTITY OR NOT, BUT IT DOES NOT MATTER
14 MUCH FOR TODAY -- FILED A NOTICE, AND THAT IS ECF NUMBER
15 68 IN THAT CASE, THAT ASSERTS THAT MR. THOMAS DID NOT
16 COMPLY WITH A SANCTIONS ORDER THAT I ISSUED IN THAT
17 CASE, EVEN THOUGH HE CERTIFIED UNDER OATH THAT HE DID,
18 AND ALSO ASSERTS THAT MR. THOMAS DID NOT HAVE AT LEAST
19 SOME OF HIS CLIENTS CONSENT TO USE THEIR NAME AS
20 PLAINTIFFS IN A COMPLAINT.

21 SO MY GOAL HERE TODAY IN SCHEDULING THIS
22 HEARING IS TO INVESTIGATE CONDUCT THAT I THINK MAY HAVE
23 UNDERMINED THE PROCEEDINGS THAT HAVE BEEN IN FRONT OF ME
24 IN THESE TWO CASES.

25 I DON'T VIEW THIS AS A ROVING

1 DISCIPLINARY PROCEEDING. I'M NOT A DISCIPLINARY COURT;
2 I'M NOT A DISCIPLINARY TRIBUNAL. I AM FOCUSED VERY MUCH
3 ON CONDUCT THAT MAY HAVE IMPACTED THE PROCEEDINGS IN
4 FRONT OF ME ONLY. THERE ARE OTHER TRIBUNALS THAT WILL
5 HAVE AN OPPORTUNITY TO TACKLE ANY OTHER DISCIPLINARY
6 ISSUES THAT MAY ARISE. I DON'T KNOW IF THERE ARE
7 DISCIPLINARY ISSUES THAT WILL ARISE. BUT SO THAT THAT
8 IS -- THAT IS MY FOCUS TODAY AND I HOPE EVERYONE WILL
9 FOCUS THEIR PRESENTATIONS ON ISSUES THAT RELATE TO THAT.

10 TO THE EXTENT WE HAVE ARGUMENT ABOUT
11 REQUESTS FOR RELIEF, TOO, BEAR THAT IN MIND. I WANT ANY
12 REQUESTS FOR RELIEF TO BE TIED TO THAT QUESTION AND THE
13 QUESTION -- SORT OF THE SANCTITY OF THE PROCEEDING IN
14 FRONT OF ME.

15 BUT THERE WERE SOME EVIDENTIARY ISSUES
16 THAT THE PARTIES STARTED TO GET INTO BY E-MAIL LAST
17 WEEK. I PUT A STOP TO THAT BECAUSE I DON'T THINK IT'S
18 THE APPROPRIATE WAY TO LITIGATE EVIDENTIARY QUESTIONS.
19 I THINK THAT NEEDS TO BE DONE IN PUBLIC VIEW AND ON THE
20 RECORD. SO IN ORDER TO SIMPLIFY THINGS, WE DID NOT DO
21 IT WITH MOTIONS IN LIMINE OR PROTECTIVE ORDERS OR OTHER
22 MOTIONS PRACTICE. I THINK THAT THERE ARE RELATIVELY
23 STRAIGHTFORWARD EVIDENTIARY ISSUES, AND I THINK WE CAN
24 JUST TACKLE THEM ON THE RECORD NOW.

25 THERE ARE, AS I SEE IT, SORT OF THREE

1 ISSUES THAT ARE FLOATING AROUND WITH RESPECT TO
2 EVIDENTIARY ISSUES. THE FIRST IS THIS. MR. THOMAS, YOU
3 HAD LISTED MR. ARTOM-GINZBURG AS A WITNESS ON THE
4 WITNESS LIST THAT YOU SUBMITTED TO ME. I GUESS I WOULD
5 LIKE TO HEAR A LITTLE BIT ABOUT WHY YOU WANT TO CALL MR.
6 ARTOM-GINZBURG. HE HAS ONLY, I THINK, BEEN INVOLVED IN
7 THIS ACTION SINCE -- WELL, I DON'T EVEN KNOW WHEN HE WAS
8 FIRST ENGAGED BY HIS CLIENTS, BUT I FIRST SAW HIM
9 SURFACE, I THINK, IN SEPTEMBER, MAYBE IT WAS EVEN
10 OCTOBER. SO I WOULD LIKE TO KNOW WHY YOU INTEND TO CALL
11 HIM.

12 MR. THOMAS: CERTAINLY, YOUR HONOR.
13 THANK YOU VERY MUCH. THERE'S A FEW REASONS THAT I THINK
14 ARE -- INCLUDING ONE, THE FACT THAT IT WAS ACTUALLY
15 ATTACHED AS PART OF HIS PLEADINGS IN RESPONSE TO YOUR
16 REQUEST FOR EVIDENCE. JUST TO BEAR OUT, NUMBER ONE
17 REGARDING THE DISCOVERY THAT MR. SHARGEL AND
18 MR. YASHAYEV ACTUALLY DISCUSSED WITH HIM AFTER I SENT
19 THEM THE DISCOVERY REQUESTS, WHETHER OR NOT I ACTUALLY
20 SENT THEM AND WHAT WAS ACTUALLY SENT.

21 NUMBER TWO IS IN REGARDS TO THE ALLEGED
22 CLAIM THAT THEY DID NOT KNOW ABOUT THE APPEAL BEING
23 FILED, THAT THEY NOT ONLY KNEW ABOUT IT, THAT THEY
24 CONFIRMED THEY WANTED IT FILED, THAT THEY ACTUALLY PAID
25 AT LEAST IN PART TO HAVE IT FILED, THAT THE ONLY REASON

1 THAT IT WAS WITHDRAWN AT ALL WAS BECAUSE MR.

2 ARTOM-GINZBURG ESSENTIALLY TOLD THEM TO.

3 AND THEN NUMBER THREE, I ACTUALLY WANTED
4 TO DISCUSS WITH HIM HIS ALLEGATIONS REGARDING HIS
5 COMMUNICATIONS WITH MYSELF AS WELL BECAUSE I BELIEVE
6 THOSE COULD ACTUALLY COME IN PART AS TO THE EVIDENCE
7 BEING PRESENTED TODAY.

8 ALL THAT, YOUR HONOR, I BELIEVE IS NOT
9 PROTECTED BY ATTORNEY/CLIENT PRIVILEGE AND IT'S
10 CERTAINLY RELEVANT TO MOST OF THE QUESTIONS THAT ARE
11 BEING PRESENTED.

12 THE COURT: WELL, MR. THOMAS, WHY CAN'T
13 YOU GET THAT INFORMATION FROM MR. SHARGEL AND
14 MR. YASHAYEV? WHY DO YOU NEED TO PUT MR. ARTOM-GINZBURG
15 ON THE STAND TO GET THAT? IT SOUNDS LIKE YOU ARE TRYING
16 TO INQUIRE OF HIM ABOUT COMMUNICATIONS HE HAD WITH THE
17 CLIENTS. I TEND TO AGREE WITH YOU. I MEAN, WITHHOLDING
18 JUDGMENT AS TO ANY SPECIFIC QUESTION, I TEND TO AGREE
19 WITH YOU THAT THE MOTION ITSELF PROBABLY PUT A LOT OF
20 THE ATTORNEY COMMUNICATIONS AT ISSUE AND THAT THERE IS
21 PROBABLY NOT A STRONG PRIVILEGE OBJECTION. BUT, YOU
22 KNOW, IT'S GENERALLY DISFAVORED AND MAYBE LESS SO IN A
23 BENCH PROCEEDING THAN IN A JURY PROCEEDING. IT'S
24 GENERALLY DISFAVORED TO PUT COUNSEL OF RECORD ON THE
25 STAND. AND IF YOU CAN GET THE INFORMATION FROM MR.

1 SHARGEL AND MR. YASHAYEV, WHY NOT JUST DO THAT?

2 MR. THOMAS: I CERTAINLY COULD DO THAT IN
3 PART, YOUR HONOR. I BELIEVE THEY MAY KNOW SOME OF THE
4 REASONS FOR ALL THAT INFORMATION, AND I MAY HONESTLY BE
5 ABLE TO GET ALL THAT INFORMATION FROM THEM. BUT I DON'T
6 KNOW THAT FOR A FACT. THAT'S WHY I WANTED TO RESERVE
7 THE RIGHT THAT IF I CAN'T ACTUALLY GET ALL THE TESTIMONY
8 FROM THEM THAT WOULD BE RELEVANT TO THOSE ANSWERS, TO
9 HAVE MR. ARTOM-GINZBURG ON THE STAND AS WELL TO ANSWER
10 ALL THOSE QUESTIONS IN FULL.

11 THE COURT: WELL, THEN WHAT WE ARE GOING
12 TO DO IS THIS. I'M NOT -- I DISFAVOR THE IDEA OF YOU
13 CALLING MR. ARTOM-GINZBURG, BUT I'M NOT GOING TO TELL
14 YOU RIGHT NOW THAT YOU DEFINITELY CAN'T. WE WILL SEE
15 HOW THINGS GO WITH MR. SHARGEL AND MR. YASHAYEV. BUT IF
16 YOU ARE GOING TO -- AT THE CONCLUSION -- I EXPECT YOU TO
17 INQUIRE OF THEM OF ALL OF THE ISSUES THAT YOU WOULD
18 EXPECT TO OBTAIN FROM MR. ARTOM-GINZBURG, AND YOU ARE
19 GOING TO HAVE TO MAKE A SHOWING TO ME THAT THE
20 INFORMATION THAT YOU WANT IS NOT AVAILABLE TO YOU
21 THROUGH THEM BEFORE I AM GOING TO LET YOU CALL MR.
22 ARTOM-GINZBURG. OKAY?

23 MR. THOMAS: UNDERSTOOD, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 YES, MR. ARTOM-GINZBURG.

1 MR. ARTOM-GINZBURG: I JUST WANTED TO
2 NARROW DOWN ONE ISSUE THAT WAS RAISED BEFORE. IN THE
3 COURSE OF RECEIVING DISCOVERY FROM MY CLIENTS, IT IS
4 CLEAR THAT THEY ASSENTED TO THE FILING OF THE APPEAL. I
5 THINK THERE ARE SOME VERY SERIOUS QUESTIONS TODAY
6 WHETHER THEY KNEW WHAT THE APPEAL WAS FOR, BUT THEY DID
7 ASSENT TO THE FILING OF THE APPEAL, AND I SUPPLIED
8 EVIDENCE TO THAT EFFECT. THERE WAS A REDACTED CREDIT
9 CARD THAT THEY HAD TEXTED TO MR. THOMAS TO PAY FOR THE
10 FILING FEES. SO THAT ISSUE, I THINK, IS PARTIALLY OFF
11 THE TABLE.

12 THE COURT: OKAY. SO LET ME TURN TO SOME
13 OF THE EXHIBITS THAT WERE SUBMITTED TO ME. AND JUST SO
14 YOU ALL KNOW, MY THOUGHT ON THE EXHIBITS -- I DID RUN MY
15 EYES OVER THEM JUST TO ORIENT MYSELF AS TO WHAT YOU HAD
16 SUBMITTED. BUT I DON'T CONSIDER WHAT HAS BEEN SUBMITTED
17 TO BE IN EVIDENCE. I CONSIDER IT LIKE ANY OTHER
18 EVIDENTIARY PROCEEDING, THAT YOU HAVE SUBMITTED TO ME IN
19 ADVANCE THE MATERIALS THAT YOU MIGHT USE, JUST REALLY
20 FOR ADMINISTRATIVE SIMPLICITY, PARTICULARLY GIVEN THAT
21 WE ARE REMOTE AND IT'S MUCH EASIER FOR ME TO CONDUCT
22 THIS PROCEEDING WITH THOSE EXHIBITS ON A SEPARATE
23 SCREEN, RATHER THAN HAVE YOU SHARE A SCREEN AND THEN MY
24 LOSING SIGHT OF WHOEVER IS ON THE SCREEN.

25 SO IF THERE ARE -- AS FAR AS I'M

1 CONCERNED, I HAVE NOT STUDIED THOSE EXHIBITS. THEY ARE
2 NOT IN FRONT OF ME UNLESS AND UNTIL YOU PUT THEM IN
3 FRONT OF ME, ONE OF YOU PUTS THEM IN FRONT OF ME, AND
4 YOU KNOW, SEEKS THEIR ADMISSION. AND SO I MAY HAVE SOME
5 QUESTIONS FOR WITNESSES AS WE GO TODAY, BUT I WILL NOT
6 PULL ANY DOCUMENT THAT YOU HAVE GIVEN TO ME AND USE IT
7 SUA SPONTE. OKAY? AS FAR AS I'M CONCERNED, THAT IS NOT
8 SORT OF MY ROLE HERE. I'M NOT AN INQUISITOR, AND SO IF
9 YOU WANT SOMETHING TO BE IN THE RECORD, YOU NEED TO GET
10 IT INTO THE RECORD.

11 THE LAST THING THAT I GUESS THAT WE HAVE
12 IS THE RECORDINGS THAT, MR. THOMAS, YOU SUBMITTED TO ME.
13 I KNOW THEY HAVE COME UP BEFORE IN THE COURSE OF THESE
14 CASES, AND I HAVE TALKED ABOUT THEM IN VARIOUS RULINGS.
15 BUT TELL ME WHAT YOU PROPOSE TO DO WITH THEM TODAY.

16 MR. THOMAS: CERTAINLY, YOUR HONOR. THEY
17 ARE NOT BEING USED FOR THE CASE-IN-CHIEF. THEY ARE
18 ACTUALLY BEING USED POTENTIALLY EITHER FOR CROSS OR JUST
19 TO CLARIFY SOME THINGS ARE ON THE RECORD. I DON'T THINK
20 FRANKLY THEY ARE LIKELY TO EVEN COME UP GIVEN WHAT WAS
21 JUST STATED BY MR. ARTOM-GINZBURG, BUT THEY MIGHT.

22 I TRIED TO ATTACH -- ADMITTEDLY IT WAS A
23 LITTLE DIFFICULT TO PUT IT ALL TOGETHER, BUT I TRIED TO
24 ATTACH EVERYTHING THAT WAS REFERRED TO IN ANY E-MAILS I
25 ATTACHED. IN ONE OF THE E-MAILS I ACTUALLY INCLUDED

1 THOSE RECORDINGS, SO THAT WAY EVERYTHING WOULD BE ON THE
2 RECORD. IF FOR SOME REASON THERE'S A QUESTION ABOUT
3 THAT, THOSE RECORDINGS ARE ON THE RECORD SO IT CAN BE
4 SEEN WHAT WAS SUBMITTED.

5 THAT SAID, THE ONLY OTHER PURPOSE TO SHOW
6 EXACTLY WHY THEY WERE SUBMITTED WAS TO SHOW ESSENTIALLY
7 WHAT I BELIEVE MR. ARTOM-GINZBURG SEEMS TO BE GETTING
8 AT, WAS TO SHOW THE EXACT REASON FOR THE MOTIONS FOR
9 RECONSIDERATION AND ULTIMATELY THE APPEAL, AND TO SHOW
10 THAT MR. YASHAYEV AND MR. SHARGEL BOTH AGREED THAT THEY
11 WERE MATERIAL, THAT A MOTION FOR RECONSIDERATION SHOULD
12 BE FILED BASED OFF OF THOSE AS EVIDENCE, THAT THEY WERE
13 -- AGAIN, I UNDERSTAND YOUR HONOR'S OPINION ON THEM, BUT
14 THEY WERE RELEVANT AND CERTAINLY MATERIAL ISSUES OF FACT
15 FOR THOSE CASES.

16 THE COURT: OKAY. WELL, I'LL RESERVE
17 JUDGMENT UNLESS -- IF YOU TRY TO USE THEM AND SOMEONE
18 HAS AN OBJECTION, I WILL HEAR THE OBJECTION. I WILL SAY
19 TO THAT POINT, THOUGH, JUST IN TERMS OF GUIDANCE, YOU
20 KNOW, I DON'T KNOW THAT -- EVEN TO YOUR ARGUMENT,
21 MR. THOMAS, TO THE EXTENT THAT RECORDINGS THEMSELVES
22 AFFECT OR AFFECTED MR. SHARGEL OR MR. YASHAYEV'S STATE
23 OF MIND, I DON'T KNOW THAT THE CONTENTS OF THE
24 RECORDINGS MATTERS A WHOLE HECK OF A LOT TO ME. IT MAY
25 JUST BE YOU SENT THEM THE RECORDINGS AND THEY HEARD

1 THEM, AND THAT MAY BE ENOUGH.

2 LET'S SORT OF SEE THE CONTEXT AS IT PLAYS
3 OUT TODAY.

4 MR. THOMAS: FRANKLY, THAT IS THE INTENT,
5 YOUR HONOR. THAT IS WHAT THEY WERE SUBMITTED FOR. LIKE
6 I SAID, I DOUBT THEY ARE EVEN GOING TO BE PLAYED. I
7 JUST WANTED TO SHOW WHAT THEY WERE SO THAT WAY IF THERE
8 IS A QUESTION THEY WERE THERE.

9 THE COURT: ALL RIGHT. SO THEN WITH ALL
10 THAT IN MIND, I THINK WHAT I PROPOSE TO DO IS --
11 MR. ARTOM-GINZBURG, THIS REALLY IS DRIVEN IN NO SMALL
12 PART BY YOUR MOTION FOR THE JOINT -- IT'S A JOINT
13 MOTION, BUT I THINK IN MANY RESPECTS YOU ARE THE DRIVING
14 FORCE BEHIND THIS GIVEN THE SUBMISSIONS I GOT LAST WEEK
15 FOR THE ORDER TO SHOW CAUSE. AND SO I'M GOING TO LET
16 YOU PUT ON YOUR CASE, TO BEGIN WITH. I DO WANT TO HEAR
17 FROM THE VARIOUS PRINCIPALS AS TO WHAT WAS GOING ON,
18 WHAT WAS BEING TOLD TO THEM, ET CETERA.

19 WE TALKED LAST TIME WE WERE TOGETHER,
20 BUT, YOU KNOW, PARTICULARLY FOR MR. SILVESTRO'S BENEFIT
21 BECAUSE YOU WERE NOT HERE LAST TIME, THE ISSUES WITH
22 WHICH I'M PARTICULARLY CONCERNED HERE GO BACK TO, IN THE
23 SHELTON ACTION, THE GRANT OF SUMMARY JUDGMENT AND
24 WHETHER AND WHEN THE CLIENTS WERE TOLD ABOUT THAT; THE
25 COMPLAINT AND AMENDED COMPLAINT IN THE JACOVETTI ACTION,

1 WHICH CLIENTS WERE TOLD ABOUT IT AND WHEN AND WHO KNEW
2 THAT HE/SHE/IT WAS BEING NAMED AS A DEFENDANT, OR AS A
3 PLAINTIFF, RATHER, IN THAT ACTION; UPDATES THAT WERE
4 GIVEN ABOUT THE PROGRESS OF THAT ACTION; UPDATES THAT
5 WERE GIVEN ABOUT THE PROCESS OF EXECUTION ON THE
6 JUDGMENTS IN THE SHELTON ACTION.

7 I MEAN, THE APPEAL WAS AN ISSUE WE TALKED
8 ABOUT. IT SOUNDS LIKE THAT MAY BE OFF THE TABLE, BUT I
9 WILL LEAVE THAT TO MR. ARTOM-GINZBURG IF THERE ARE STILL
10 ISSUES ABOUT THE APPEAL TO TRY AND RAISE THEM. BUT IT
11 SOUNDS LIKE THERE IS GENERAL AGREEMENT THE CLIENTS AT
12 LEAST KNEW THERE WAS AN APPEAL BEING FILED.

13 AND THEN COMPLIANCE WITH THE SANCTIONS
14 ORDER I ISSUED IN THE JACOVETTI LAW CASE; AND THE
15 COMPLIANCE WITH THE DISCOVERY IN AID OF EXECUTION, IF I
16 HAVE NOT ALREADY SAID THAT, IN THE SHELTON ACTION; AND
17 THE VARIOUS SORT OF SANCTIONS ORDERS THAT CAME WITH
18 THAT; AND ORDERS COMPELLING PRODUCTION, AND THINGS LIKE
19 THAT. I THINK THAT IS THE UNIVERSE OF THINGS I WANT TO
20 COVER, AND THAT I WOULD LIKE TO HEAR ABOUT FROM THE
21 WITNESSES.

22 SO I DON'T KNOW, MR. ARTOM-GINZBURG, IF
23 YOU HAVE PEOPLE WHO ARE ABOUT TO CONNECT. I HAVE NOT
24 SEEN THEM.

25 MR. ARTOM-GINZBURG: THEY ARE IN THE ROOM

1 WITH ME, YOUR HONOR. I WAS ABOUT TO ASK WHETHER YOU
2 WANT -- I THINK THAT FOR PRACTICAL PURPOSES I THINK I
3 WILL HAVE THEM CONNECT SEPARATELY SO THAT I CAN CONTINUE
4 TO SHARE DOCUMENTS TO THE SCREEN.

5 THE COURT: WHY DON'T YOU DO THAT AND
6 THEN WHOEVER YOU ARE GOING TO START WITH, AND THEN WE
7 WILL SWEAR THEM IN.

8 MR. ARTOM-GINZBURG: LET'S START WITH
9 BARRY, I GUESS, WHICHEVER ONE OF YOU WANTS TO DIAL IN
10 TOGETHER AND SEPARATELY. I'M FORWARDING YOU THE LINK
11 RIGHT NOW.

12 THEY ARE DIALING IN. THEY ARE DIALING
13 IN, UNLESS YOU WANT TO GO IN BY VIDEO. THEN CLICK ON
14 THE LINK.

15 YOUR HONOR, WHILE THEY DIAL IN, MAY I
16 STEP AWAY FOR JUST A MOMENT TO GET A BOTTLE OF WATER?

17 THE COURT: YES.

18 MR. ARTOM-GINZBURG: THANK YOU.

19 MR. YASHAYEV: GOOD MORNING, YOUR HONOR.

20 THE COURT: SO MR. ARTOM-GINZBURG, I AM
21 TAKING FROM WHAT I SEE ON THE SCREEN THAT YOU ARE
22 CALLING MR. YASHAYEV.

23 MR. ARTOM-GINZBURG: YES.

24 THE COURT: MS. BUENZLE, CAN YOU SWEAR
25 HIM IN.

1 (EMIL YASHAYEV, DEFENSE WITNESS, SWORN.)

2 THE COURT: MR. YASHAYEV, KEEP YOUR VOICE
3 UP. IT'S A LITTLE HARD TO HEAR YOU AND PARTICULARLY
4 WITH A COURT REPORTER WHO IS RECORDING US. IT'S A
5 CHALLENGE.

6 ALL RIGHT. MR. ARTOM-GINZBURG, GO AHEAD.

7 MR. ARTOM-GINZBURG: MR. YASHAYEV --

8 THE COURT: I'M GOING TO STOP YOU. I WAS
9 CONCERNED ABOUT THAT. ARE YOU GUYS IN THE SAME ROOM?

10 MR. ARTOM-GINZBURG: WE ARE IN THE SAME
11 ROOM.

12 THE COURT: YOU'RE GOING TO GET FEEDBACK.
13 I DON'T KNOW IF YOU NEED TO MOVE TO A DIFFERENT ROOM,
14 BUT YOU PROBABLY CAN'T BE IN THE SAME ROOM.

15 MR. ARTOM-GINZBURG: STEP INTO MY OFFICE.

16 THE COURT: LET'S TRY IT AGAIN.

17 DIRECT EXAMINATION

18 BY MR. ARTOM-GINZBURG:

19 Q. MR. YASHAYEV, THIS MATTER RELATES TO
20 COMMUNICATIONS THAT YOU HAD WITH YOUR THEN ATTORNEY,
21 JOSHUA THOMAS, IN REGARDS TO A SUIT THAT WAS BROUGHT
22 AGAINST YOU AND YOUR COMPANY CALLED SHELTON VERSUS FCS
23 CAPITAL.

24 I HAD PROVIDED YOU WITH A SUMMARY OF
25 TELEPHONE RECORDS AND E-MAILS AND SMS MESSAGES THAT HAD

1 BEEN EXCHANGED BETWEEN THE PARTIES DURING THE RELEVANT
2 PERIODS IN TIME. I'M GOING TO SHARE THAT AT THE MOMENT
3 WITH --

4 MR. ARTOM-GINZBURG: IF YOUR HONOR COULD
5 TURN ON MY ABILITY TO SHARE THE SCREEN.

6 THE COURT: DOES HE HAVE A COPY, MR.
7 ARTOM-GINZBURG?

8 MR. ARTOM-GINZBURG: HE HAS A PHYSICAL
9 COPY.

10 THE COURT: I'D RATHER YOU ALL LOOK AT
11 IT, RATHER THAN SHARING THE SCREEN. I HAVE A COPY HERE,
12 I HAVE A COUPLE MONITORS, AND IT'S EASIER FOR ME TO SEE
13 EVERYBODY, RATHER THAN LOSE SIGHT OF YOU WHILE YOU SHARE
14 THE DOCUMENT.

15 MR. ARTOM-GINZBURG:

16 Q. DO YOU HAVE THAT SUMMARY IN FRONT OF YOU,
17 MR. YASHAYEV?

18 A. I DO.

19 Q. I AM GOING TO TAKE YOU BACK TO SEPTEMBER OF
20 2019. YOU HAD HIRED MR. THOMAS TO REPRESENT YOU IN THIS
21 MATTER. MR. YASHAYEV?

22 A. YES, I'M -- YES, THAT IS WHAT IT SEEMS LIKE.

23 Q. YOU HAD HIRED MR. THOMAS TO REPRESENT YOU IN
24 THIS MATTER.

25 A. YES.

1 Q. ON SEPTEMBER 17TH, 2019 THE DOCKET INDICATES A
2 MOTION FOR SUMMARY JUDGEMENT WAS FILED IN THIS CASE. I
3 SEE FROM THE RECORDS THAT DURING THE PERIOD OF TIME TO
4 ANSWER THE SUMMARY JUDGMENT THERE WERE TWO PHONE CALLS
5 MADE BACK AND FORTH IT APPEARS -- THEY APPEAR TO HAVE
6 BEEN MADE BY MR. SHARGEL. DID YOU HAVE ANY
7 COMMUNICATION WITH MR. THOMAS DURING THIS PERIOD OF
8 TIME?

9 A. I BELIEVE MR. THOMAS SPOKE WITH MR. SHARGEL, AND
10 THEN I HAD A SEPARATE CONVERSATION WITH MR. SHARGEL.

11 Q. SO YOU DID NOT DIRECTLY TALK TO MR. THOMAS?

12 A. NOT AT THAT TIME, I DON'T BELIEVE, NO.

13 Q. ON OCTOBER 8TH, 2019 MR. THOMAS FILED A MOTION
14 FOR EXTENSION OF TIME TO ANSWER. DURING THE SPACE OF
15 TIME BETWEEN SEPTEMBER 17, 2019 AND OCTOBER 8, 2019, DID
16 YOU SPEAK TO MR. THOMAS AT ALL?

17 A. MAYBE BRIEFLY WITH MR. SHARGEL, REALLY JUST TO
18 GET AN UPDATE FOR WHAT IS GOING ON, AND KIND OF THE
19 COMMON ANSWER WAS THAT WE HAVE TO FILE SOME PAPERWORK, I
20 WILL GET BACK TO YOU WITH WHATEVER WE MIGHT NEED.

21 Q. DID THE WORDS "SUMMARY JUDGMENT" GET USED WITH
22 YOU?

23 A. I DON'T BELIEVE SO, NO.

24 Q. DO YOU KNOW WHAT SUMMARY JUDGMENT IS?

25 A. I DO NOW.

1 Q. OCTOBER 8TH THE COURT STRUCK THE ORIGINAL MOTION
2 FOR SUMMARY JUDGEMENT AND THE SAME DAY MR. REO FILED AN
3 AMENDED MOTION FOR SUMMARY JUDGEMENT.

4 I HAVE RECORD OF A CALL LASTING ONE
5 MINUTE BETWEEN MR. SHARGEL AND MR. THOMAS ON
6 OCTOBER 10TH. DID YOU HAVE ANY INDEPENDENT
7 CONVERSATIONS WITH MR. THOMAS DURING THIS TIME PERIOD?

8 A. I DON'T BELIEVE I HAVE ANY INDEPENDENT
9 CONVERSATIONS. WHATEVER CONVERSATIONS I MIGHT HAVE HAD
10 WOULD HAVE BEEN TOGETHER WITH MR. SHARGEL AND
11 MR. THOMAS.

12 Q. ON OCTOBER 22, 2019, MR. THOMAS FILED A MOTION
13 FOR EXTENSION OF TIME TO ANSWER THE SUMMARY JUDGMENT
14 MOTION. BETWEEN OCTOBER 8TH AND OCTOBER 22ND DID YOU
15 HAVE ANY CONVERSATIONS WITH MR. THOMAS?

16 A. CAN YOU REPEAT THAT ONE MORE TIME? I APOLOGIZE.

17 Q. BETWEEN OCTOBER 8TH OF LAST YEAR AND
18 OCTOBER 22ND OF LAST YEAR, DID YOU HAVE ANY
19 CONVERSATIONS WITH MR. THOMAS?

20 A. I DID NOT, NO.

21 Q. ON OCTOBER THE 17TH, THIS COURT ISSUED AN ORDER
22 FOR A CORPORATE DISCLOSURE STATEMENT OF FCS CAPITAL,
23 WHICH -- CORPORATE DISCLOSURE STATEMENTS, SINCE YOU ARE
24 NOT A LAWYER, LISTS THE OWNERSHIP OF THE COMPANY AND WHO
25 THE PARTIES WHO OWN THE COMPANY ARE AND WHETHER IT IS A

1 PUBLICLY TRADED COMPANY. AND I SEE THAT MR. THOMAS
2 FILED A CORPORATE DISCLOSURE ON OCTOBER 24TH, 2019. IN
3 THE WEEK OF OCTOBER 17TH TO OCTOBER 24TH I HAVE NO LIST
4 OF ANY PHONE CALLS WITH MR. THOMAS OR ANY E-MAILS OR ANY
5 TEXT MESSAGES. DID YOU HAVE ANY COMMUNICATION WITH HIM?

6 A. I DON'T BELIEVE I DID. IT MIGHT HAVE BEEN
7 SOMETHING WITH -- EITHER VIA E-MAIL OR SOMETHING LIKE
8 THAT, BUT I DON'T RECALL SENDING ANYTHING DIRECTLY
9 MYSELF.

10 Q. WERE YOU EVER PROVIDED WITH AN AFFIDAVIT TO SIGN
11 IN OPPOSITION TO SUMMARY JUDGMENT?

12 A. I DON'T RECALL EXACTLY WHAT PIECE OF PAPER WAS
13 THAT I WAS PROVIDED, BUT I DID HAVE SOMETHING FOR
14 SIGNATURE THAT I DID SIGN. I DON'T REMEMBER EXACTLY
15 WHEN THAT WAS, THOUGH.

16 Q. WAS THAT THE CERTIFICATION THAT YOU WANTED
17 MR. THOMAS TO CONTINUE AS COUNSEL?

18 A. I BELIEVE THAT'S WHAT THAT WAS.

19 Q. NOBODY EVER PROVIDED YOU WITH AN AFFIDAVIT THAT
20 LISTED THE REASONS WHY JUDGMENT SHOULD NOT BE GRANTED,
21 FOR EXAMPLE, THE NUMBER IN QUESTION WAS NOT APPLICABLE
22 TO THE ACT, WHICH I UNDERSTAND WAS YOUR DEFENSE.

23 A. I DON'T EXACTLY REMEMBER IF THERE WAS A SEPARATE
24 DOCUMENT. I KNOW WHAT YOU ARE REFERRING TO, BUT I DON'T
25 REMEMBER IF THERE WAS ONE AND IF I DID SIGN IT.

1 Q. I NOTE CALLS -- MR. SHARGEL MADE TWO CALLS
2 LASTING ONE MINUTE EACH ON DECEMBER 10TH TO MR. THOMAS.

3 WERE YOU PRESENT FOR THOSE CALLS?

4 A. I DON'T BELIEVE SO, NO.

5 Q. DID YOU HAVE ANY COMMUNICATION WITH MR. THOMAS
6 IN NOVEMBER OR THE BEGINNING OF DECEMBER?

7 A. I MIGHT HAVE, BUT AGAIN, IT WOULD BE TOGETHER
8 WITH MR. SHARGEL AS HE WAS THE ONE WHO WAS HAVING
9 MAJORITY OF THE COMMUNICATION WITH MR. THOMAS.

10 Q. ON DECEMBER 11, 2019, THIS COURT ENTERED AN
11 ORDER GRANTING JUDGMENT AGAINST YOU, YOUR COMPANY AND
12 MR. SHARGEL. DID YOU RECEIVE ANY COMMUNICATION AT THAT
13 TIME FROM MR. THOMAS SAYING THAT THERE WAS A JUDGMENT
14 AGAINST YOU?

15 A. NO.

16 Q. I NOTICE A SERIES OF SHORT CALLS IN JANUARY BACK
17 AND FORTH BETWEEN MR. SHARGEL AND MR. THOMAS. DID YOU
18 TALK TO MR. SHARGEL IN -- WITH MR. THOMAS IN JANUARY?

19 A. I DON'T BELIEVE SO. I BELIEVE, AGAIN, I SPOKE
20 WITH MR. SHARGEL. BUT FROM WHAT I REMEMBER BACK IN
21 JANUARY, I DON'T BELIEVE THERE WAS ANY KIND OF NEWS,
22 ESPECIALLY NO NEWS OF ANY JUDGMENT, YOU KNOW, THAT WE
23 DISCUSSED AT THAT TIME.

24 Q. ON JANUARY 27, 2020, MR. THOMAS FILED A MOTION
25 FOR RECONSIDERATION OF THE JUDGMENT. WERE YOU AWARE

1 -- EITHER OF THE JUDGMENT OR THAT THERE HAD BEEN A
2 MOTION FOR RECONSIDERATION FILED?

3 A. I WAS NOT AWARE OF A JUDGMENT AT THAT TIME. I
4 KNOW THAT THERE HAS BEEN TALKS ABOUT FOR A MOTION TO
5 RECONSIDER, BUT I BELIEVE THE WAY THAT IT WAS EXPLAINED
6 AND THE WAY THAT I UNDERSTOOD IT, IT WAS A MOTION TO
7 RECONSIDER, I GUESS, AN OPINION ON ANOTHER MOTION THAT
8 EITHER WE FILED OR THE ANSWER THAT WE HAD GIVEN OR
9 SOMETHING LIKE THAT. I WAS NOT AWARE THAT IT WAS AN
10 ANSWER OR A MOTION TO RECONSIDER ON A JUDGMENT.

11 Q. I NOTICE A COUPLE OF SCATTERED CALLS, TWO CALLS
12 ON FEBRUARY 4TH AND ONE ON MARCH 10TH TO MR. SHARGEL.
13 DURING THE MONTH OF FEBRUARY AND MARCH OF THIS YEAR, DID
14 YOU HAVE ANY CONVERSATIONS WITH MR. THOMAS?

15 A. I DON'T BELIEVE PERSONALLY I HAD, NO.

16 Q. ON APRIL 23RD, YOU RECEIVED AN E-MAIL FROM
17 MR. THOMAS ASKING FOR A CERTIFICATION FOR THE OTHER CASE
18 THAT WAS BEING INVOLVED IN. THIS IS THE ONE THAT YOU
19 TALKED ABOUT EARLIER, THE ONE WHERE HE ASKED IF YOU
20 WANTED HIM TO CONTINUE AS LAWYER. WOULD YOU TELL US
21 WHAT THE CIRCUMSTANCES AROUND THAT WERE.

22 A. SO IF THIS IS THE CERTIFICATION PERTAINING TO
23 OUR CASE, THEN THIS IS WHAT I WAS REFERENCING EARLIER.
24 HOWEVER, THIS WAS A CERTIFICATION FOR A CASE IN WHICH
25 MR. JACOVETTI WAS THE PLAINTIFF AGAINST MR. SHELTON.

1 THAT IS NOT WHAT I BELIEVED THAT IT WAS FOR. SO I DID
2 SPEAK TO HIM IN REGARDS -- SO I SPOKE TO BARRY AND HIM
3 IN REGARDS TO CERTIFICATION FOR WHAT I BELIEVED WAS OUR
4 CASE.

5 Q. AND WHAT DID YOU BELIEVE THAT THAT CERTIFICATION
6 WAS FOR?

7 A. JUST TO EXPLAIN KIND OF HOW I UNDERSTOOD IT, IT
8 WAS A CERTIFICATION SAYING THAT WE WOULD LIKE MR. THOMAS
9 TO CONTINUE AS OUR ATTORNEY, SEEING THAT HE HAS NOT DONE
10 ANYTHING THAT WOULD CONSTITUTE ANY TYPE OF MISCONDUCT ON
11 OUR END, AND THAT WE WANTED HIM TO MOVE FORWARD WITH THE
12 CASE. BUT JUST SO I'M CLEAR KIND OF HOW WE UNDERSTOOD
13 IT, WE STILL AT THIS POINT DID NOT KNOW ABOUT THE
14 JUDGMENT THAT WAS FILED BACK IN DECEMBER.

15 Q. WERE YOU AWARE OF ANY MISCONDUCT RELATING TO
16 MR. THOMAS, ANY REASON THAT YOU WOULD HAVE NEEDED SUCH A
17 CERTIFICATION?

18 A. BASED ON THE PREVIOUS CONVERSATIONS THAT WE'VE
19 HAD WITH MR. THOMAS AND THE ANSWERS THAT WE WERE
20 RECEIVING AT THAT TIME, WE DID NOT BELIEVE THAT THERE
21 WAS ANY CAUSE FOR MISCONDUCT OR ANYTHING LIKE THAT.

22 Q. I HAVE NO CALLS IN THE MONTH OF MAY. ON MAY 25
23 MR. REO FILED A MOTION FOR POST-JUDGMENT DISCOVERY, AND
24 THE COURT ORDERED ON MAY 26TH THE POST-JUDGMENT
25 DISCOVERY HAD TO BE ANSWERED BY JUNE 1ST. DID YOU

1 RECEIVE ANY POST-JUDGMENT DISCOVERY AT THAT POINT?
2 POST-JUDGMENT DISCOVERY WOULD BE A LIST -- ASKING TO
3 LIST YOUR BANK ACCOUNTS, TAX RETURNS, THAT SORT OF
4 THING.

5 A. WE RECEIVED SOMETHING FROM MR. THOMAS GIVING US
6 WHAT AT THE TIME I DID NOT KNOW WAS POST-JUDGMENT
7 DISCOVERY, BUT BASICALLY IT WAS SAYING, PLEASE LIST ANY
8 ACCOUNT NUMBERS, PLEASE LIST ANY 401(K)S, RETIREMENT
9 ACCOUNTS AND THINGS OF THAT NATURE. AT THE TIME WHEN WE
10 ASKED WHAT THE PURPOSE OF THIS WAS FOR, IT WAS EXPLAINED
11 TO US THAT THIS WOULD ALLOW US TO STAY COLLECTION
12 ACTIVITY ON THE JUDGMENT BECAUSE WE WOULD SHOW THAT WE
13 WOULD BASICALLY HAVE THE FINANCIAL MEANS TO COVER THE
14 JUDGMENT BECAUSE AT THIS POINT WE WERE, YOU KNOW,
15 DISCUSSING AN APPEAL TO THE JUDGMENT.

16 Q. LET ME STOP YOU THERE FOR A SECOND.

17 THE E-MAIL I HAVE FROM MR. THOMAS THAT
18 ATTACHED THE POST-JUDGMENT INTERROGATORIES, WAS DATED
19 JULY 20TH. DID HE SEND YOU ANYTHING IN MAY?

20 A. NO, NO. WHENEVER WE STARTED DISCUSSING THAT WAS
21 WHEN WE RECEIVED THE E-MAIL. SO IF WE DID NOT HAVE THE
22 E-MAIL BACK IN MAY, THAT CONVERSATION WAS HAD IN JULY.

23 Q. ON JUNE 1ST, MR. THOMAS FILED A SECOND MOTION
24 FOR RECONSIDERATION AND A MOTION TO STAY A JUDGMENT.
25 DID HE CONSULT WITH YOU BEFORE FILING EITHER OF THOSE

1 DOCUMENTS?

2 A. NOT DIRECTLY WITH ME, NO.

3 Q. ON JUNE 17TH, THIS COURT ISSUED AN OPINION
4 DENYING THE MOTION FOR RECONSIDERATION/PRELIMINARY
5 INJUNCTION. DID YOU HAVE ANY CONVERSATION WITH HIM
6 SURROUNDING THAT?

7 A. NOT -- ONCE AGAIN, NOT DIRECTLY WITH ME. THE
8 CONVERSATION I HAD WAS WITH MR. SHARGEL THROUGH A
9 MAJORITY OF THESE TIME FRAMES. SO AT THAT POINT, NO, I
10 DON'T REMEMBER HAVING A CONVERSATION DIRECTLY WITH
11 MR. THOMAS.

12 Q. ON JUNE 23RD WE HAVE SOME RECORDS OF
13 CONVERSATIONS. THESE ARE ACTUALLY MR. SHARGEL'S
14 CONVERSATIONS REGARDING AN APPEAL. DID YOU KNOW ABOUT
15 AN APPEAL IN JUNE OF 2020?

16 A. WE DID KNOW ABOUT AN APPEAL ALREADY FOR THE
17 JUDGMENT BECAUSE WE KNEW OF THE JUDGMENT ONCE WE KIND OF
18 WENT AND LOOKED AT THE DOCKET OURSELVES AND SAW THAT
19 THERE WAS A JUDGMENT ENTERED AGAINST US, SO THEN THIS IS
20 WHEN WE PROVIDED THOSE ADDITIONAL DOCUMENTS TO --

21 Q. AGAIN, THE ADDITIONAL DOCUMENTS WERE IN JULY.
22 THIS IS IN JUNE. DID YOU KNOW IN JUNE?

23 A. WE KNEW THAT WE HAD A JUDGMENT AT THIS POINT.
24 THAT IS WHEN WE I BELIEVE SENT OVER A COPY OF A CREDIT
25 CARD TO PAY FOR THE COST OF THE APPEAL OF THE JUDGMENT.

1 Q. WHAT WERE YOU TOLD THE APPEAL WAS FOR?

2 A. IT WAS AN APPEAL FOR THE JUDGMENT.

3 Q. ON JUNE 29TH THERE WAS A MOTION FOR CONTEMPT AND
4 A MOTION FOR SANCTIONS FILED BY MR. REO, AND A RESPONSE
5 WAS FILED ON JULY 15TH. MR. SHARGEL HAD NO PHONE
6 RECORDS INDICATING ANY COMMUNICATION WITH MR. THOMAS
7 DURING THIS PERIOD OF TIME. DID YOU HAVE ANY
8 CONVERSATION BETWEEN THE TIME A MOTION FOR CONTEMPT WAS
9 FILED ON JUNE 29TH AND THE RESPONSE ON JULY 15TH?

10 A. NO, I DID NOT.

11 Q. ON JULY 17TH THERE WAS A MOTION HEARING BEFORE
12 JUDGE WOLSON. WERE YOU AWARE OF IT?

13 A. I DON'T RECALL THE EXACT DATE, BUT I DID KNOW
14 THAT THERE WAS A HEARING AROUND THAT TIME.

15 Q. ON JULY 20TH YOU RECEIVED AN E-MAIL FROM
16 MR. THOMAS ATTACHING THE POST-JUDGMENT INTERROGATORIES.
17 AND THAT DOCUMENT -- I'M GOING TO HAVE -- I'M GOING TO
18 HAVE THAT E-MAIL BROUGHT TO YOU.

19 MR. ARTOM-GINZBURG: ONE SECOND, COURT'S
20 INDULGENCE, YOUR HONOR.
21 BY MR. ARTOM-GINZBURG:

22 Q. THIS IS AN E-MAIL THAT IS DATED JULY THE 20TH,
23 AND ATTACHED WERE SOME QUESTIONS THAT YOU HAD TO ANSWER.

24 THE COURT: MR. ARTOM-GINZBURG, I JUST
25 WANT TO STOP YOU. I KNOW WE ARE REMOTE BUT I WANT TO

1 MAKE SURE WE ARE MAKING A CLEAR RECORD. AND SO I THINK
2 ONE OF THE THINGS WE NEED TO DO IS, JUST SO THAT
3 EVERYONE CAN REFER BACK TO THINGS, LET'S START
4 DESIGNATING EXHIBITS.

5 MR. ARTOM-GINZBURG: YOUR HONOR,
6 THEREFORE, AS A SUMMARY, I WOULD LIKE TO DESIGNATE MY
7 SUMMARY OF COMMUNICATIONS AS EXHIBIT 1.

8 THE COURT: SO WE WILL MARK THAT AS
9 EXHIBIT 1, IS THE SUMMARY OF PHONE COMMUNICATIONS, AND I
10 HAVE THAT -- I BELIEVE -- I WANT TO CONFIRM, DO ALL
11 COUNSEL HAVE THAT? I KNOW YOU E-MAILED IT AND COPIED
12 PEOPLE.

13 DOES EVERYBODY HAVE THAT?

14 YES? OKAY.

15 AND, YOU KNOW, I WILL TAKE CARE OF THE
16 ADMINISTRATION ON THIS END IN TERMS OF ENSURING THAT WE
17 GET THEM INTO THE FILE. AND THEN --

18 MR. ARTOM-GINZBURG: EXHIBIT 2 WOULD BE
19 THE APRIL 23RD LETTER THAT ASKED FOR THE CERTIFICATION.

20 THE COURT: LET ME JUST -- JUST TO CLOSE
21 THE LOOP ON THIS, BEFORE WE GET TO THAT, ARE YOU MOVING
22 TO ADMIT THE SUMMARY, MR. GINZBURG?

23 MR. ARTOM-GINZBURG: I WOULD MOVE TO
24 ADMIT THE SUMMARY. IT IS A TRUE AND ACCURATE SUMMARY OF
25 THE PHONE RECORDS, WHICH, AS I EXPLAINED IN MY E-MAIL,

1 ARE VOLUMINOUS.

2 THE COURT: OKAY. DOES ANYONE HAVE AN
3 OBJECTION TO THE ADMISSION OF THE SUMMARY INTO EVIDENCE?

4 ALL RIGHT. I WILL TAKE THAT AS A NO.

5 SO I WILL ADMIT EXHIBIT 1 INTO EVIDENCE.

6 (EXHIBIT 1, SUMMARY OF COMMUNICATION,
7 ADMITTED, INTO EVIDENCE.)

8 THE COURT: AND THEN EXHIBIT 2 YOU SAID
9 IS THE E-MAIL THAT IS DATED APRIL 23RD.

10 MR. ARTOM-GINZBURG: LET ME GIVE YOU A
11 PAGE NUMBER, YOUR HONOR. IT IS --

12 THE COURT: LET ME SEE IF I HAVE THAT.

13 MR. ARTOM-GINZBURG: PAGE NUMBER -- IT IS
14 PAGE NUMBER 19 OF THE PDF, YOUR HONOR.

15 THE COURT: WHICH PDF IS IT?

16 MR. ARTOM-GINZBURG: E-MAIL AND SMS
17 EXHIBITS.

18 THE COURT: IT'S PAGE 19, YOU SAID?

19 THE WITNESS: YES.

20 THE COURT: IS IT -- SO IS IT JUST THAT
21 E-MAIL? JUST THAT PAGE, RIGHT?

22 MR. ARTOM-GINZBURG: JUST THAT PAGE, YOUR
23 HONOR.

24 THE COURT: THERE'S AN ASSEMBLY OF THINGS
25 HERE, BUT THEY'RE DIFFERENT E-MAILS. SO IT'S JUST THAT

1 PAGE RIGHT NOW, RIGHT?

2 MR. ARTOM-GINZBURG: YES, YOUR HONOR.

3 THE COURT: SO EXHIBIT 2 IS PAGE 19 OF
4 THE E-MAIL AND SMS PDF YOU SENT ME.

5 GO AHEAD. YOU NEED TO LAY A FOUNDATION
6 FOR THAT. AND THEN WE CAN TALK ABOUT GETTING IT INTO
7 EVIDENCE. BUT I JUST WANT TO MAKE SURE WE ARE ALL
8 LOOKING AT THE SAME THING.

9 GO AHEAD.

10 MR. ATOM-GINZBURG: YOUR HONOR, I HAD
11 QUESTIONED HIM PREVIOUSLY ABOUT THE CERTIFICATION, AND
12 THIS WAS THE E-MAIL ENCLOSING THE CERTIFICATION.

13 THE COURT: RIGHT.

14 MR. ARTOM-GINZBURG: THE CERTIFICATION
15 THAT YOU HAD ASKED FOR AS PART OF THE JACOVETTI CASE.

16 THE COURT: I UNDERSTAND THAT, BUT I
17 THINK -- I DON'T KNOW, MAYBE YOU THINK YOU LAID A
18 FOUNDATION FOR THE ADMISSION.

19 MR. ARTOM-GINZBURG: YOUR HONOR, I HAVE
20 QUESTIONED HIM ABOUT IT.

21 THE COURT: OKAY. SO YOU ARE MOVING FOR
22 ITS ADMISSION?

23 MR. ARTOM-GINZBURG: I WOULD MOVE IT -- I
24 WOULD MOVE IT IN.

25 THE COURT: ANYONE HAVE ANY OBJECTION TO

1 IT?

2 NO. I WILL TAKE SILENCE AS A NO.

3 EXHIBIT 2, WHICH IS PAGE 19 OF THAT
4 EXHIBIT, WILL COME IN, AND I WILL -- OR PAGE 19 OF THAT
5 FILE, AND AGAIN, WE WILL HANDLE THE ADMINISTRATION AND
6 PULL THAT PAGE OUT AND MARK IT AS EXHIBIT 2 FOR THE
7 COURT'S RECORDS.

8 (EXHIBIT 2, PAGE 19 OF THE EMAIL AND SMS
9 EXHIBITS PDF ADMITTED INTO EVIDENCE.)

10 THE COURT: GO AHEAD, MR. ARTOM-GINZBURG.
11 BY MR. ARTOM-GINZBURG:

12 Q. NOW, WE TAKE WHERE WE WERE WHEN YOUR HONOR
13 STOPPED, WHICH WAS THE E-MAIL OF JULY 20TH ENCLOSING THE
14 POST-JUDGMENT DISCOVERY, WHICH IS DATED JULY 20TH AND IS
15 ON PAGE 12 OF THAT PDF FILE.

16 THE COURT: OKAY. AND AGAIN, IT'S JUST
17 THAT ONE PAGE, RIGHT?

18 MR. ARTOM-GINZBURG: JUST THAT ONE PAGE.

19 THE COURT: SO THAT WILL BE EXHIBIT 3.

20 MR. ARTOM-GINZBURG: ALL RIGHT. NOW, I
21 BELIEVE I CAN DIRECT MY QUESTIONS BACK TO THE WITNESS.
22 BY MR. ARTOM-GINZBURG:

23 Q. THE DOCUMENT IN FRONT OF YOU IS DATED JULY THE
24 20TH AND IS OPINIONS -- POST-JUDGMENT INTERROGATORIES.
25 YOU REFERRED TO IT BEFORE. WAS JULY 20TH THE FIRST TIME

1 YOU SAW THESE POST-JUDGMENT INTERROGATORIES?

2 A. YES, THEY WERE.

3 Q. ON JULY 21ST, THE COURT ENTERED AN ORDER
4 REGARDING CONTEMPT AND SANCTIONS ON MR. THOMAS. AND I
5 SEE THAT MR. SHARGEL AT LEAST HAD A VERY LONG
6 CONVERSATION ON JULY 22ND ABOUT THIS, A 13-MINUTE
7 CONVERSATION. DID YOU -- WERE YOU PRESENT FOR THAT
8 CONVERSATION?

9 A. I DON'T RECALL IF I WAS PRESENT FOR THAT
10 SPECIFIC CONVERSATION. I WAS PRESENT FOR A BRIEF
11 CONVERSATION AROUND THAT TIME, AROUND THE TIME WHEN WE
12 RECEIVED POST-JUDGMENT DISCOVERY REQUESTS.

13 Q. NOW, WAS THIS THE POINT WHERE YOU LEARNED ABOUT
14 THE JUDGMENT?

15 A. CORRECT. SO ONCE WE RECEIVED THIS PAPERWORK --
16 IT WAS EXPLAINED TO US THAT ONCE WE PROVIDE ALL THESE
17 THINGS FROM ACCOUNT NUMBERS TO OWNERSHIP INFORMATION, TO
18 TAX RETURNS, TO VARIOUS DIFFERENT FINANCIAL INSTRUMENTS,
19 THAT THIS WOULD ALLOW US TO STAY ANY TYPE OF COLLECTION
20 ACTIVITY AS THERE IS A CASE FOR US TO APPEAL THE
21 JUDGMENT, AND IN DOING SO, WE PROVIDED EVERYTHING, YOU
22 KNOW, ACCOUNT NUMBERS, THINKS LIKE THAT. DID NOT REDACT
23 ANYTHING. THIS KIND OF RESULTED IN TWO OF OUR ACCOUNTS
24 BEING LOCKED UP.

25 Q. WHEN DID THE ACCOUNTS START BEING LOCKED UP?

1 A. SHORTLY AFTER WE PROVIDED THE PAPERWORK
2 REQUESTED ON THIS DAY.

3 Q. AT THE END OF JULY?

4 A. YES.

5 Q. ON JULY 27TH, THERE WAS A PETITION FOR
6 ATTORNEYS' FEES FILED BY MR. REO AND ANOTHER MOTION FOR
7 SANCTIONS, FAILURE TO ANSWER DISCOVERY. I SEE A NUMBER
8 OF CONVERSATIONS WITH MR. SHARGEL GOING INTO THE FIRST
9 WEEK OF AUGUST. WERE YOU PRESENT FOR ANY OF THOSE
10 CONVERSATIONS?

11 A. I DID REMEMBER SPEAKING TO MR. SHARGEL AROUND
12 THAT TIME IN REGARDS TO WHAT WAS GOING ON, BUT I DON'T
13 BELIEVE I SPOKE DIRECTLY WITH MR. THOMAS AT THAT TIME.

14 Q. ON SEPTEMBER 1ST THE COURT ISSUED AN ORDER
15 GRANTING ATTORNEYS' FEES FOR HAVING TO PURSUE THIS
16 MATTER. WERE YOU AWARE OF THAT ORDER?

17 A. I DON'T RECALL IF I WAS AWARE OF THAT ORDER
18 SPECIFICALLY ON THAT DATE. I KNOW A LOT OF WHAT KIND OF
19 THE UPDATES THAT WE WERE GETTING, WE WERE FINDING
20 OURSELVES BY GOING ON VARIOUS ONLINE DOCKET WEBSITES AND
21 KIND OF READING WHAT WAS GOING ON IN THE CASE AND HAVING
22 TO FOLLOW UP WITH JOSH, WITH MR. THOMAS, EXCUSE ME, TO
23 SEE IF THERE WERE ANY UPDATES.

24 Q. ON SEPTEMBER 4TH, A THIRD MOTION FOR SANCTIONS
25 WAS FILED. I DON'T SEE ANY COMMUNICATION UNTIL

1 SEPTEMBER THE 9TH. DO YOU THINK YOU SPOKE TO MR. -- DO
2 YOU THINK YOU SPOKE TO MR. THOMAS THE FIRST WEEK OF
3 SEPTEMBER, SECOND WEEK OF SEPTEMBER?

4 A. I DON'T BELIEVE SO.

5 Q. ON SEPTEMBER 10TH A MOTION WAS FILED TO CONTINUE
6 A SANCTIONS HEARING. WERE YOU CONSULTED AS TO WHETHER
7 THE SANCTIONS HEARING WAS CONVENIENT FOR YOU OR WHETHER
8 YOU WERE ABLE TO ATTEND IT?

9 A. SPECIFICALLY WITH ME, NO.

10 Q. ON SEPTEMBER THE 22ND AN ORDER WAS ISSUED
11 SETTING A DEADLINE OVER THE WEEKEND FOR PRODUCING
12 DOCUMENTS. I THINK THIS IS WHERE I CAME INTO THE
13 PICTURE. DID YOU SPEAK TO MR. THOMAS REGARDING THAT
14 ORDER?

15 A. I DON'T RECALL IF I SPOKE TO MR. THOMAS, BUT I
16 DID SPEAK TO MR. SHARGEL, AND I'M ASSUMING IT WAS
17 FOLLOWING A CONVERSATION THAT YOU HAD WITH MR. SHARGEL
18 AT THAT TIME WHEN WE RETAINED YOU AND YOUR LAW OFFICE TO
19 STEP INTO THE CASE.

20 Q. ON SEPTEMBER 25TH THE MOTION FOR CONTEMPT WAS
21 FILED FOR FAILURE TO RESPOND. DID YOU TALK TO
22 MR. THOMAS DURING THE LAST WEEK OF SEPTEMBER?

23 A. I DON'T THINK SO.

24 Q. NOW, A HEARING WAS RESCHEDULED FOR A SANCTIONS
25 HEARING FOR OCTOBER THE 2ND. DO YOU REMEMBER THIS

1 HEARING?

2 A. I DO REMEMBER THERE BEING A HEARING AROUND THAT
3 TIME. I DON'T REMEMBER EXACTLY WHAT IT WAS FOR, BUT I
4 DO REMEMBER BEING TOLD THAT THERE WAS A HEARING AT THAT
5 TIME.

6 Q. DID YOU ASK MR. THOMAS TO ATTEND THAT HEARING?

7 A. I DON'T BELIEVE I DID.

8 Q. GIVE ME JUST ONE SECOND.

9 A. ARE WE TALKING ABOUT THE OCTOBER 2ND HEARING?

10 Q. YES.

11 A. THAT WAS IN RE --

12 Q. YOU BROKE UP FOR A SECOND THERE.

13 A. IN REGARDS TO A HEARING PERTAINING TO SANCTIONS,
14 I DO BELIEVE THAT THAT WAS ONE OF THE LAST THINGS THAT
15 WE SPOKE ABOUT WHERE WE WANTED MR. THOMAS TO ATTEND.

16 Q. DID YOU GET AN INVITATION TO THAT HEARING FROM
17 MR. THOMAS?

18 A. NO, I DID NOT.

19 Q. DURING ALL THOSE MONTHS FROM DECEMBER UNTIL --
20 JANUARY WAS WHEN THE SUMMARY JUDGMENT WAS GRANTED. YOUR
21 TESTIMONY WAS THAT IT WAS -- THAT IT WAS JULY WHEN YOU
22 RECEIVED THE POST-JUDGMENT INTERROGATORIES, THAT YOU
23 BECAME AWARE OF THE JUDGMENT. DURING THOSE SIX MONTHS
24 DID YOU HAVE ANY CONVERSATIONS WITH MR. THOMAS?

25 A. WE DID, YOU KNOW, SEVERAL TIMES FOR -- WE ASKED

1 FOR UPDATES WITH THE CASE, JUST TO KIND OF UNDERSTAND
2 WHAT'S GOING ON, IF ANY ADDITIONAL INFORMATION WAS
3 NEEDED FROM US, YOU KNOW, ANY E-MAILS, RECORDS, ANYTHING
4 OF THAT NATURE. THE COMMON THEME OF THE ANSWERS WE WERE
5 RECEIVING FROM MR. THOMAS WERE THAT, YOU KNOW,
6 EVERYTHING SEEMS TO BE OKAY AT THIS TIME. THERE ARE
7 SOME THINGS THAT I NEED TO DO. YOU DON'T NEED TO
8 PROVIDE ME ANYTHING AT THIS TIME, BUT THERE WAS NO KIND
9 OF POINT MADE THAT THERE HAS BEEN A JUDGMENT SINCE
10 DECEMBER.

11 MR. ARTOM-GINZBURG: I HAVE NOTHING
12 FURTHER FOR THIS WITNESS, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. REO, YOU ARE A JOINT MOVANT HERE. DO
15 YOU HAVE ANYTHING FOR MR. YASHAYEV?

16 MR. REO: I DO HAVE SEVERAL QUESTIONS,
17 YOUR HONOR, BUT CAN WE HAVE A FIVE MINUTE RECESS SO I
18 COULD USE THE BATHROOM, PLEASE?

19 THE COURT: SURE.

20 MR. REO: THANK YOU.

21 (BREAK TAKEN.)

22 THE COURT: AS SOON AS WE GET SILVESTRO
23 BACK, WE WILL RESUME.

24 WE HAVE EVERYBODY. LET'S GO BACK ON THE
25 RECORD.

1 MR. REO, YOUR EXAMINATION.

2 CROSS EXAMINATION

3 BY MR. REO:

4 Q. MR. YASHAYEV, MY QUESTION FOR YOU, ON MARCH 27
5 OF 2020, THE COURT ENTERED AN ORDER IN THE CASE
6 JACOVETTI LAW V SHELTON SANCTIONING JOSHUA THOMAS AND
7 REQUIRING THAT HE FURNISH CERTAIN TRANSCRIPTS UPON YOU,
8 MR. SHARGEL AND THE COMPANY AND JACOVETTI LAW AND
9 MR. ROBERT JACOVETTI. THAT WAS ECF NUMBER 29. ON MAY 4
10 OF 2020 HE FILED A RESPONSE TO THE COURT'S ORDER TO SHOW
11 CAUSE WHEREIN HE STATED THAT HE SERVED THE TRANSCRIPTS
12 ON ALL OF HIS CLIENTS, AND HE HAD A SIGNATURE PAGE TOO.
13 DID HE SERVE A 76-PAGE DOCUMENT, THE TRANSCRIPTS OF A
14 SANCTIONS HEARING ON YOU AND INFORM YOU THAT HE HAD BEEN
15 SANCTIONED IN THE CASE?

16 A. AROUND WHAT TIME FRAME?

17 Q. IT WOULD HAVE BEEN EITHER IN MARCH, APRIL OR
18 SOMETIME AFTER THE 27TH OF MARCH AND BEFORE THE 4TH OF
19 MAY.

20 A. I DON'T RECALL RECEIVING ANYTHING THAT WAS
21 76 PAGES LONG.

22 Q. BECAUSE THE COMMUNICATION, SUMMARY OF
23 COMMUNICATIONS SUBMITTED BY MR. ARTOM-GINZBURG REVEALS
24 NO COMMUNICATIONS DURING THE RELEVANT TIME PERIOD.
25 THERE WAS A TWO-MINUTE CALL ON THE 10TH OF MARCH BEFORE

1 THE SANCTIONS ORDER, AND THEN THERE WAS -- THE NEXT
2 PHONE CALL WAS JUNE 23RD. SO YOU ARE SAYING YOU DO NOT
3 REMEMBER A 76-PAGE DOCUMENT OF TRANSCRIPTS BEING
4 FURNISHED TO YOU?

5 A. NO.

6 Q. DO YOU KNOW IF MR. SHARGEL RECEIVED A 76-PAGE
7 DOCUMENT OF TRANSCRIPTS?

8 A. I DON'T BELIEVE THAT HE DID, BUT I THINK THAT IS
9 A BETTER QUESTION FOR HIM.

10 Q. CERTAINLY.

11 DID MR. THOMAS INFORM YOU EITHER BY
12 E-MAIL, TEXT OR PHONE CALL DURING THE RELEVANT TIME
13 PERIOD, 27TH OF MARCH TO THE 4TH OF MAY, THAT HE HAD
14 BEEN SANCTIONED?

15 A. NO.

16 Q. DID YOU SPECIFICALLY AUTHORIZE JACOVETTI LAW V
17 SHELTON -- THE CASE WHERE MR. THOMAS LISTED YOU,
18 MR. SHARGEL AND FCS CAPITAL AS PLAINTIFFS, DID YOU
19 AUTHORIZE HIM TO FILE THAT LAWSUIT?

20 A. I DID NOT.

21 Q. WHEN DID YOU FIRST LEARN OF THE JUDGMENT IN
22 SHELTON V FCS?

23 A. IT WAS AROUND JUNE, JULY, AROUND THAT TIME
24 PERIOD.

25 Q. SO DID JOSHUA THOMAS EXPLICITLY TELL YOU THAT

1 NOT ONLY A JUDGEMENT HAD BEEN ENTERED AGAINST YOU, BUT
2 THAT IT WAS IN THE AMOUNT OF \$54,000?

3 A. ONLY AT THE POINT WHERE WE FOUND OUT ABOUT THE
4 JUDGMENT DID WE KNOW WHAT THE AMOUNT WAS FOR, AND THERE
5 WAS NO EXPLANATION AS TO WHY THE AMOUNT WAS WHAT THE
6 AMOUNT WAS.

7 Q. SO HE DID NOT EXPLAIN THE CIRCUMSTANCES
8 SURROUNDING THE JUDGMENT, IS THAT FAIR?

9 A. YES.

10 Q. WHEN HE PROVIDED THE COURT IN JACOVETTI LAW V
11 SHELTON ON THE 4TH OF MAY A SIGNATURE PAGE STATING THAT
12 HE HAD DISCUSSED THE MATTER OF THE CASE WITH HIS CLIENTS
13 AND THAT THEY WANTED HIM TO CONTINUE, WHEN HE OBTAINED
14 YOUR SIGNATURE -- AS YOU'VE SAID, YOU NEVER SAW THE
15 TRANSCRIPTS -- DID HE TELL YOU THAT THERE WAS A CASE,
16 JACOVETTI LAW V SHELTON, THAT EXISTED, OR DID HE LEAD
17 YOU TO BELIEVE YOU WERE SIGNING SOMETHING FOR SHELTON V
18 FCS?

19 A. SO WE WERE AWARE THAT THERE WAS A CASE BY MR.
20 JACOVETTI AGAINST MR. SHELTON, BUT THAT IS KIND OF THE
21 END OF WHAT WE KNEW ABOUT IT. WE WERE AWARE THAT THAT
22 WAS SOMETHING THAT HE WAS PLANNING ON DOING, BUT WE WERE
23 NOT INVOLVED IN IT. WE WERE NOT SUPPOSED TO BE INVOLVED
24 WITH IT. THAT WAS SOMETHING SEPARATE FROM THE CASE THAT
25 WE HAD. SO FROM THAT POINT, KIND OF ALL THE

1 COMMUNICATION THAT WE HAD WITH MR. THOMAS, IT WAS
2 PERTAINING TO OUR CASE, SPECIFICALLY SHELTON VERSUS FCS.

3 Q. SO IT'S FAIR TO SAY THAT MR. THOMAS DID NOT
4 ADVISE YOU THE SIGNATURE THAT HE WAS OBTAINING FROM YOU
5 WOULD BE USED IN JACOVETTI'S CASE.

6 A. IT'S FAIR TO SAY THAT, YES.

7 Q. SO FROM YOUR PERSPECTIVE FROM WHAT MR. THOMAS
8 LED YOU TO BELIEVE, YOU WERE SIGNING OFF ON A PAPER FOR
9 SHELTON V FCS, THE CASE WHERE YOU WERE A DEFENDANT.

10 A. THAT'S CORRECT, AS WITH ALL THE PAPERWORK THAT
11 WE HAVE HAD, WE BELIEVED IT WAS PERTAINING TO OUR CASE.

12 MR. REO: NOTHING FURTHER AT THIS TIME.

13 THE COURT: OKAY. I HAVE A COUPLE OF
14 QUESTIONS THAT I WANT TO PUT OUT THERE, MR. THOMAS,
15 BEFORE I LET YOU EXAMINE HIM, JUST SO YOU HAVE THE
16 BENEFIT OF THOSE.

17 BY THE COURT:

18 Q. SO MR. YASHAYEV, AS I LISTEN TO YOUR TESTIMONY,
19 IT IS MY IMPRESSION THAT MR. SHARGEL SORT OF TOOK THE
20 LEAD IN THE COMMUNICATIONS WITH MR. THOMAS WITH RESPECT
21 TO DEFENDING THE CASE THAT MR. SHELTON HAD FILED AGAINST
22 YOU, IS THAT RIGHT?

23 A. THAT'S CORRECT, YOUR HONOR.

24 Q. SO -- AND MR. REO JUST ASKED YOU ABOUT GETTING A
25 COPY OF A TRANSCRIPT OF A PROCEEDING THAT I CONDUCTED IN

1 MARCH, AND YOU SAY YOU DID NOT GET THAT. DID YOU EVER
2 GET A COPY OF MY WRITTEN DECISION IN WHICH I CONCLUDED
3 THAT SANCTIONS WERE APPROPRIATE TO IMPOSE ON MR. THOMAS?

4 A. I DID NOT, YOUR HONOR.

5 Q. AND WHEN YOU SIGNED THE CERTIFICATION ABOUT
6 CONTINUING WITH MR. THOMAS IN THE CASE, DID YOU DISCUSS
7 WITH MR. THOMAS WHAT PROMPTED HIM TO -- OR WHY HE HAD TO
8 GET THAT CERTIFICATION?

9 A. SO WHEN WE RECEIVED THAT CERTIFICATION, OUR
10 QUESTION WAS WHY DO WE NEED TO SIGN THIS? AND
11 MR. THOMAS ANSWERED BRIEFLY SAYING THAT I DIDN'T DO
12 ANYTHING WRONG, THAT I'M A GOOD GUY. YOU WANT ME TO
13 STAY ON THE CASE. SOMETHING ALONG THOSE LINES.

14 Q. DID HE GET INTO ANY DETAIL ABOUT ANY ORDERS I
15 HAD ISSUED REQUIRING THE SUBMISSION OF THAT
16 CERTIFICATION?

17 A. NO, YOUR HONOR.

18 Q. DID YOU ASK AT ALL WHY -- YOU LOOKED AT THE
19 DOCUMENT, IT HAS THREE SIGNATURE LINES AT THE BOTTOM,
20 RIGHT? THERE'S ONE FOR MR. JACOVETTI, ONE FOR
21 MR. SHARGEL, AND YOU.

22 DID YOU ASK WHY ALL THREE OF YOU WERE
23 SIGNING THAT?

24 A. I DIDN'T, YOUR HONOR. MAYBE I THOUGHT THAT
25 SINCE INITIALLY MR. SHELTON DID FILE SUIT AGAINST

1 MR. JACOVETTI, I FIGURED MAYBE THAT IS WHY MR.

2 JACOVETTI'S SIGNATURE WAS THERE AS WELL.

3 Q. OKAY. I WANT TO SHIFT GEARS REAL QUICKLY. WE
4 TALKED A LITTLE BIT -- I THINK MR. ARTOM-GINZBURG ASKED
5 YOU ABOUT THE APPEAL THAT WAS FILED. I UNDERSTAND YOU
6 KNEW THAT THERE WAS AN APPEAL THAT WAS GOING TO BE
7 FILED. AT THE TIME OF THE APPEAL, DID YOU KNOW THAT I
8 HAD ORDERED YOU TO PRODUCE DOCUMENTS TO MR. SHELTON IN
9 CONNECTION WITH THE JUDGMENT THAT HAD BEEN ENTERED?

10 A. NOT AT THE TIME OF THE APPEAL, YOUR HONOR.

11 Q. SO DID YOU KNOW THAT THE APPEAL WAS GOING TO
12 COVER ISSUES RELATING TO THE ORDER THAT YOU PRODUCE
13 DOCUMENTS?

14 A. WE DID NOT, YOUR HONOR.

15 Q. THE COMPLAINT THAT WAS FILED IN THE JACOVETTI
16 LAW MATTER, I THINK YOU SAID THAT YOU NEVER AUTHORIZED
17 MR. THOMAS TO FILE THAT WITH YOUR -- AT LEAST WITH YOU
18 AS A PLAINTIFF. IS THAT WHAT YOU SAID?

19 A. THAT'S CORRECT, YOUR HONOR.

20 Q. DID YOU KNOW THAT MR. THOMAS WAS PLANNING TO
21 FILE A COMPLAINT ON BEHALF OF MR. JACOVETTI BEFORE IT
22 GOT FILED?

23 A. WE'VE SPOKEN TO MR. JACOVETTI ABOUT SOMETHING
24 LIKE THAT. HE SAID THAT HE WAS LOOKING TO MOVE FORWARD
25 AND FILE A COMPLAINT WITH MR. THOMAS AGAINST

1 MR. SHELTON, BUT IT WAS NOT ANYTHING AS FAR AS US
2 ACTUALLY BEING INVOLVED IN THAT CASE THAT WAS DISCUSSED.

3 Q. SO YOU NEVER SAW A DRAFT OF A COMPLAINT THAT WAS
4 GOING TO BE FILED OR ANYTHING LIKE THAT?

5 A. NO.

6 Q. DID YOU EVER -- AFTER THE COMPLAINT WAS FILED,
7 DID YOU EVER DISCUSS IT WITH MR. THOMAS THAT IT HAD BEEN
8 FILED?

9 A. I PERSONALLY DID NOT DISCUSS IT WITH MR. THOMAS.
10 THE BRIEF CONVERSATIONS I HAD WITH MR. JACOVETTI ABOUT
11 IT WAS SIMPLY, YOU KNOW, WAS IT FILED. I BELIEVE HE
12 EVEN SENT US AN ARTICLE WITH -- WRITTEN ABOUT THAT
13 COMPLAINT WHERE IT INCLUDED US AS PLAINTIFFS, AND THAT
14 IS WHEN THE QUESTION AROSE AS TO WHY WE WERE INCLUDED AS
15 PLAINTIFFS ON THAT COMPLAINT.

16 Q. WHEN YOU SAY THE QUESTION AROSE, WHO RAISED THE
17 QUESTION?

18 A. WE DID. WE'VE ASKED MR. THOMAS WHY WERE WE
19 INCLUDED IN THAT COMPLAINT AS WELL AS ASKING MR.
20 JACOVETTI, BECAUSE WE WERE NOT SUPPOSED TO BE PART OF
21 THAT COMPLAINT.

22 Q. DO YOU REMEMBER WHEN THAT HAPPENED?

23 A. I DON'T REMEMBER EXACTLY WHEN. I DO REMEMBER IT
24 WAS EITHER, YOU KNOW, EARLIER THIS YEAR OR BRIEFLY AFTER
25 IT WAS FILED, MAYBE A FEW MONTHS AFTER IT WAS FILED.

1 Q. OKAY.

2 AND WHAT EXPLANATION DID YOU GET FROM --
3 LET ME START WITH MR. THOMAS, ABOUT WHY YOU HAD BEEN
4 NAMED AS A PLAINTIFF IN THE CASE?

5 A. THERE WAS REALLY NO CLEAR EXPLANATION, YOUR
6 HONOR. IT WAS -- BASICALLY IT WAS DONE, AND HE WAS
7 GOING TO GET US OUT OF THERE.

8 Q. DID YOU HAVE ANY DISCUSSION WITH MR. JACOVETTI
9 ABOUT WHY YOU HAD BEEN NAMED?

10 A. AGAIN, WE'VE ASKED HIM, WHAT WAS THE REASONING?
11 WE REALLY DIDN'T GET AN ANSWER. WE WERE NOT SUPPOSED TO
12 BE INCLUDED IN IT, AND HE TOLD US THAT WE WOULD BE
13 REMOVED FROM THAT COMPLAINT.

14 Q. DID YOU TALK ABOUT WHAT WAS GOING TO HAPPEN TO
15 REMOVE YOU?

16 A. BASICALLY, HE EXPLAINED TO US THAT WE WOULD JUST
17 BE REMOVED FROM IT, AND THERE WOULD BE JUST MR.
18 JACOVETTI VERSUS MR. SHELTON. I DON'T REMEMBER EXACTLY
19 WHAT THE PROCEDURE FOR THAT WOULD HAVE BEEN.

20 Q. DID YOU DO ANYTHING TO FOLLOW UP TO ENSURE THAT
21 YOU HAD BEEN REMOVED?

22 A. I DO REMEMBER SPEAKING WITH MR. JACOVETTI, NOT
23 WITH MR. THOMAS, AND WITH MR. SHARGEL. I DON'T REMEMBER
24 EXACTLY WHEN THAT WAS. THE ANSWER -- PROBABLY THE
25 ANSWER THAT I RECEIVED WAS THAT IT'S BEING TAKEN CARE

1 OF, YOU ARE GOING TO BE REMOVED.

2 MR. ARTOM-GINZBURG: OKAY. THAT IS ALL I
3 HAVE.

4 THE COURT: ONE HOUSEKEEPING ISSUE JUST
5 BEFORE I TURN THINGS OVER TO MR. THOMAS.

6 MR. ARTOM-GINZBURG, I DON'T THINK WE
7 CLOSED THE LOOP AND HAD YOU MOVE IN YOUR THIRD EXHIBIT,
8 WHICH WAS THE JULY 20TH E-MAIL. WAS THAT SOMETHING YOU
9 WANTED TO MOVE INTO EVIDENCE?

10 SORRY. YOU ARE ON MUTE.

11 MR. ARTOM-GINZBURG: YOUR HONOR, YES, I
12 WOULD LIKE TO MOVE THAT INTO EVIDENCE.

13 THE COURT: DID ANYONE HAVE ANY
14 OBJECTIONS TO THAT COMING INTO EVIDENCE?

15 I WILL TAKE SILENCE AS NO. SO WE WILL
16 ADMIT THAT.

17 (EXHIBIT NUMBER 3, PAGE 12 OF THE EMAIL
18 AND SMS EXHIBITS PDF, ADMITTED INTO EVIDENCE.)

19 THE COURT: SO I HAVE EXHIBITS 1, 2 AND 3
20 AS ADMITTED.

21 MR. THOMAS, YOU CAN INQUIRE AS TO
22 MR. YASHAYEV.

23 MR. THOMAS: THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION

25 BY MR. THOMAS:

1 Q. MR. YASHAYEV, IS IT -- HOW ARE YOU?

2 A. GOOD. HOW ARE YOU?

3 Q. IS IT FAIR TO SAY THAT THE VAST MAJORITY OF
4 E-MAILS IN THIS CASE USUALLY CAME FROM MR. SHARGEL?

5 A. ARE YOU ASKING IF THEY CAME TO ME FROM
6 MR. SHARGEL?

7 Q. I'M ASKING THAT THE COMMUNICATION VIA E-MAIL,
8 USUALLY WHEN IT WAS SENT TO ME, DID IT USUALLY COME FROM
9 YOU OR MR. SHARGEL?

10 A. MOST OF THE TIME IT WOULD BE MR. SHARGEL.

11 Q. BEFORE MR. SHARGEL SENT E-MAIL COMMUNICATIONS TO
12 ME, DID YOU REVIEW THOSE COMMUNICATIONS?

13 A. THERE HAS BEEN TIMES WHEN I HAVE, AND THERE'S
14 BEEN TIMES WHEN I HAVE NOT. IF IT WAS SOMETHING WHERE
15 THERE WERE QUESTIONS FOR ME FROM MR. SHARGEL, WE
16 REVIEWED IT. IF IT WAS A PIECE OF PAPER THAT
17 MR. SHARGEL COULD DOWNLOAD AND SEND OVER, THEN WE WOULD
18 NOT REVIEW THOSE QUESTIONS.

19 Q. I'M GOING TO REFER TO PAGE 11 OF THE COMBINED
20 DISCOVERY THAT I SENT OVER.

21 THE COURT: MR. THOMAS, WHEN YOU SAY "THE
22 COMBINED DISCOVERY" THAT YOU SENT OVER, ARE YOU
23 REFERRING TO AN EXHIBIT?

24 MR. THOMAS: I SENT OVER AS PART OF YOUR
25 HONOR'S REQUEST --

1 (SNEEZE) BLESS YOU.

2 IT WAS A COMBINED 348-PAGE DOCUMENT THAT
3 INCLUDED ALL THE E-MAILS AND ATTACHMENTS. I'M REFERRING
4 TO THAT ATTACHMENT, THAT PDF.

5 THE COURT: OKAY. AND SO WHAT PAGE ARE
6 WE ON?

7 MR. THOMAS: PAGE 11 OF THE PDF.

8 THE WITNESS: YOUR HONOR, WOULD I BE ABLE
9 TO GET A COPY OF THAT? I BELIEVE MR. GINZBURG HAS IT IN
10 FRONT OF HIM, IF I COULD JUST WALK OVER THERE.

11 THE COURT: I DON'T HAVE A PROBLEM IF YOU
12 WANT TO WALK OVER THERE. YOU NEED TO MAKE SURE YOU ARE
13 ON CAMERA SO I CAN SEE YOUR TESTIMONY.

14 MR. THOMAS: I CAN FORWARD HIM A COPY IF
15 THAT WOULD BE EASIER, YOUR HONOR.

16 THE COURT: WHATEVER IS EASIEST AND
17 FASTEST FOR MR. YASHAYEV.

18 MR. THOMAS: MR. YASHAYEV, DO YOU JUST
19 WANT TO GO OVER THERE OR DO YOU WANT THE E-MAIL --

20 THE WITNESS: I'M GOING TO GO OVER THERE,
21 BUT I WILL KEEP THE CAMERA.

22 THE COURT: MR. THOMAS, WHILE HE MOVES, I
23 JUST WANT TO MAKE SURE WE ARE LOOKING AT THE SAME THING.
24 PAGE 11 OF THE PDF YOU SENT ME IS AN E-MAIL DATED
25 DECEMBER 12TH, 2018. IS THAT WHAT WE ARE LOOKING AT?

1 MR. THOMAS: YES, YOUR HONOR.

2 THE COURT: OKAY.

3 MR. YASHAYEV, ARE YOU THERE? DO YOU HAVE
4 WHAT YOU NEED?

5 YOU ARE ON MUTE, MR. YASHAYEV.

6 THE WITNESS: YEAH, I HAVE EVERYTHING.

7 THE COURT: GO AHEAD, MR. THOMAS.

8 MR. THOMAS: THANK YOU, YOUR HONOR.

9 BY MR. THOMAS:

10 Q. SO ARE YOU LOOKING AT PAGE 11, MR. YASHAYEV?

11 A. YES.

12 Q. DO YOU SEE WHAT THAT E-MAIL IS?

13 A. YES.

14 Q. DO YOU SEE HOW IT BREAKS DOWN A LOT OF
15 INFORMATION REGARDING THIS SPECIFIC CASE?

16 A. I DO.

17 Q. WERE YOU FAMILIAR OR DID YOU KNOW THAT THIS
18 SPECIFIC E-MAIL WAS SENT OUT BY MR. SHARGEL?

19 A. I'M SHOWING THAT THIS E-MAIL IS DATED
20 DECEMBER 12TH, 2018, SO I DON'T REMEMBER EXACTLY WHAT WE
21 SPOKE ABOUT, BUT I'M SURE IF IT'S AN E-MAIL WITH A LOT
22 OF INFORMATION THAT IT WAS DISCUSSED BETWEEN THE BOTH OF
23 US.

24 Q. DID MR. SHARGEL TELL YOU THAT HE WAS SENDING
25 THIS E-MAIL OUT TO ME?

1 A. YES.

2 Q. SO YOU ARE FAMILIAR WITH THE FACT EVEN THOUGH
3 YOU WERE NOT ACTUALLY ATTACHED TO THIS E-MAIL THAT YOU
4 -- THAT THIS INFORMATION WAS SENT TO ME, IS THAT
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND IS IT FAIR TO SAY THAT THIS E-MAIL IS NOT
8 INCLUDED IN THE SUMMARY OF COMMUNICATIONS THAT WAS
9 COMPILED BY MR. ARTOM-GINZBURG?

10 A. I'M NOT SURE. I'D HAVE TO GO THROUGH BOTH
11 DOCUMENTS AND SEE IF IT IS THERE.

12 Q. DID YOU HELP COMPILE THAT LIST OF COMMUNICATIONS
13 WITH MR. ARTOM-GINZBURG?

14 A. I DID NOT HELP MR. ARTOM-GINZBURG DIRECTLY, BUT
15 I DID SPEAK WITH MR. SHARGEL IN REFERENCE TO DOCUMENTS
16 THAT WE NEEDED.

17 Q. DO YOU KNOW HOW THAT SPECIFIC LIST OF
18 COMMUNICATIONS WAS COMPILED?

19 A. NO, I'M NOT SURE.

20 Q. SO YOU DON'T KNOW IF THAT WAS ACTUALLY COMPLETE.
21 DID YOU --

22 A. I'D HAVE TO LOOK AT THE LIST TO TELL YOU THAT,
23 BUT FROM WHAT I UNDERSTAND THE MAJORITY OF WHAT WAS
24 NEEDED AND ASKED OF US WE DID PROVIDE.

25 Q. AGAIN, IT'S CALLED SUMMARY OF TELEPHONE CALLS.

1 DID YOU ACTUALLY SEND OVER ANY TELEPHONE CALLS TO
2 MR. ARTOM-GINZBURG TO COMPILE THIS?

3 A. THAT IS A QUESTION FOR MR. SHARGEL BECAUSE HE
4 WAS THE ONE THAT WOULD BE SENDING OVER MANY TELEPHONE
5 CALLS OR COMMUNICATION.

6 Q. UNDERSTOOD. I'M ASKING FOR YOU SPECIFICALLY.
7 DID YOU SEND HIM ANY COMMUNICATIONS?

8 A. I PERSONALLY DID NOT SEND HIM ANYTHING.

9 Q. DID YOU SEND HIM ANY E-MAILS?

10 A. I DID NOT SEND HIM ANY E-MAILS.

11 Q. THEN WE CAN KEEP GOING.

12 SO WHEN THERE WAS COMMUNICATIONS BETWEEN
13 MYSELF AND BARRY, DID HE USUALLY FILL YOU IN AS TO WHAT
14 OCCURRED?

15 A. YES.

16 Q. WAS THAT THE STANDARD PRACTICE, LIKE YOU AND I
17 WOULD TALK WITH BARRY OR MR. JACOVETTI, AND THEN YOU
18 WOULD BE TOLD AFTERWARDS WHAT OCCURRED?

19 A. TYPICALLY, YES.

20 Q. OCTOBER 30TH, I'M GOING TO REFER TO PAGE 265.

21 THE COURT: HOLD ON, MR. THOMAS. SO THE
22 E-MAIL YOU WERE JUST REFERRING TO IS PAGES 11 AND 12, I
23 THINK, OF YOUR FILE, WHICH WE SHOULD MARK AS EXHIBIT 4
24 JUST SO AGAIN WE KNOW WHAT MR. YASHAYEV WAS TESTIFYING
25 TO. ARE YOU MOVING THAT INTO EVIDENCE?

1 MR. THOMAS: I THINK I SAID EXHIBIT A,
2 YOUR HONOR. I APOLOGIZE. BUT YEAH, WE CAN MARK IT AS
3 EXHIBIT 4.

4 THE COURT: LET'S JUST KEEP THE EXHIBITS
5 AS A RUNNING LIST, RATHER THAN HAVING DIFFERENT SYSTEMS
6 FOR EVERYBODY. THAT IS PAGES 11 AND 12.

7 MR. GINZBURG, MR. REO, ANYBODY HAVE ANY
8 OBJECTIONS TO THE ADMISSION OF THAT E-MAIL?

9 I WILL TAKE YOUR SILENCE AS NO, AND WE
10 WILL ADMIT IT INTO EVIDENCE AS EXHIBIT 4.

11 (EXHIBIT 4, PAGES 11 AND 12 OF THE
12 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

13 THE COURT: ALL RIGHT. I CUT YOU OFF,
14 MR. THOMAS. GO AHEAD.

15 MR. THOMAS: THAT IS OKAY.

16 BY MR. THOMAS:

17 Q. MR. YASHAYEV, I'M REFERRING NEXT TO PAGE 265.

18 A. IS THIS E-MAIL DATED DECEMBER 19, 2019?

19 Q. YES, IT IS.

20 A. OKAY.

21 Q. THIS WAS ACTUALLY AN E-MAIL SENT TO
22 MR. JACOVETTI REGARDING THE COMPLAINT THAT WAS ACTUALLY
23 COMPILED ORIGINALLY FOR THE -- I GUESS THE PROACTIVE
24 CASE THAT WAS FILED IN 2020.

25 WERE YOU FAMILIAR WITH THE FACT THAT

1 THERE HAD BEEN SOME RECORDINGS PRIOR TO THIS E-MAIL
2 BEING SENT?

3 A. I DON'T RECALL, MR. THOMAS.

4 Q. LET ME TAKE A STEP BACK ACTUALLY. YOU FELT THAT
5 YOU HAD STRONG REASONS WHY MR. JACOVETTI -- I'M SORRY,
6 WHY MR. SHELTON'S CASE AGAINST YOU SHOULD NOT HAVE
7 PROCEEDED, CORRECT?

8 A. WE FELT WE HAD REASONS THAT, YOU KNOW, WOULD
9 HAVE PRESENTED A MERITABLE DEFENSE.

10 Q. AND WHEN WE ORIGINALLY STARTED --

11 A. I KNOW WE GAVE YOU A LOT OF THINGS THAT WE
12 BELIEVED WOULD HAVE US --

13 (TECHNICAL INTERRUPTION.)

14 Q. SO YOU FELT THAT YOU HAD A STRONG DEFENSE
15 AGAINST THE CASE. DO YOU ALSO FEEL THAT YOU WANTED TO
16 TURN AROUND AND PURSUE AN ACTION AGAINST MR. SHELTON?

17 A. NO. WE WANTED TO PURSUE OUR CASE AND KIND -- OF
18 ON THE MERITS OF THE CASE.

19 Q. AND WERE YOU PART OF THE CONVERSATIONS BETWEEN
20 MYSELF AND MR. JACOVETTI WHERE WE SPECIFICALLY STATED
21 NUMEROUS TIMES THAT THERE WAS GOING TO BE AN ACTION
22 AGAINST MR. SHELTON?

23 A. I WAS NOT A PART OF MANY CONVERSATIONS, BUT I
24 WAS AWARE THAT THAT WAS SOMETHING THAT WAS BEING
25 DISCUSSED BETWEEN YOU AND MR. JACOVETTI.

1 Q. AND YOU WERE AWARE THAT THERE HAD BEEN A
2 DISCUSSION ALL THE WAY BACK, I THINK, EVEN BEFORE THIS
3 E-MAIL WAS SENT IN REGARDS TO THE FACT THAT YOU GUYS
4 WOULD BE INCLUDED AS PART OF THE CASE.

5 A. I DON'T REMEMBER THERE BEING ANY CONVERSATION
6 ABOUT US BEING PART OF THE CASE.

7 Q. DO YOU REMEMBER AT ANY TIME WHERE YOU ACTUALLY
8 TRIED TO CALL AND SAY THAT YOU DID NOT CALL ME
9 SPECIFICALLY AND SAY YOU DID NOT WANT TO BE PART OF THAT
10 ACTION?

11 A. WHERE I CALLED YOU SPECIFICALLY, I DON'T
12 REMEMBER. I DO REMEMBER SPEAKING WITH MR. JACOVETTI AS
13 WELL AS MR. SHARGEL AND US ALL AGREEING THAT WE SHOULD
14 NOT BE PART OF THAT ACTION BECAUSE WE WERE NOT SUPPOSED
15 TO BE PART OF THAT ACTION.

16 Q. DID YOU EVER SPECIFICALLY ASK OR REQUEST FROM ME
17 EITHER IN WRITING OR IN A TEXT MESSAGE OR IN AN E-MAIL
18 THAT SAID TO WITHDRAW YOU FROM THE ACTION?

19 A. I PERSONALLY DID NOT, BUT I'M ALMOST CERTAIN
20 THAT BOTH MR. JACOVETTI AND MR. SHARGEL HAD MULTIPLE
21 CONVERSATIONS IN REGARDS TO THAT.

22 Q. SO THE ACTUAL AMENDED COMPLAINT OR AT LEAST THE
23 MOTION TO AMEND THE COMPLAINT TO REMOVE, I GUESS, YOU
24 GUYS FROM THE ACTION WAS ACTUALLY FILED BACK AROUND
25 MARCH 6, 2020. DO YOU REMEMBER US EVER HAVING A

1 CONVERSATION REGARDING REMOVING YOU FROM THE COMPLAINT
2 PRIOR TO MARCH 6TH?

3 A. NO, I DO NOT.

4 Q. I'M GOING TO SHOW YOU THE E-MAIL THAT I JUST
5 REFERRED TO AT PAGE 265, REFER TO THAT AS EXHIBIT 5 FOR
6 THE RECORD.

7 THE COURT: ARE YOU MOVING ITS ADMISSION?

8 MR. THOMAS: YES, YOUR HONOR.

9 THE COURT: JUST TO BE CLEAR, IT'S PAGES
10 265 AND 266 OF THE PDF, RIGHT?

11 MR. THOMAS: YES.

12 THE COURT: ANYBODY HAVE ANY OBJECTIONS
13 TO ITS ADMISSION?

14 I WILL TAKE SILENCE AS A NO. WE WILL
15 ADMIT EXHIBIT 5 INTO THE RECORD.

16 (EXHIBIT 5, PAGES 265 AND 266 OF THE
17 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

18 BY MR. THOMAS:

19 Q. I'M GOING TO REFER NEXT TO PAGE 6. I'M SORRY,
20 NOT PAGE 6, MY APOLOGY, PAGE 16, 1, 6. I'M SORRY.
21 PAGE 16. MY APOLOGIES.

22 LET ME KNOW WHEN YOU ARE THERE,

23 MR. YASHAYEV.

24 A. PAGE 16. I'M HERE.

25 Q. DO YOU SEE WHAT THIS E-MAIL IS DATED -- WHAT IS

1 THE DATE?

2 A. FEBRUARY 27, 2020.

3 Q. AND DO YOU SEE WHAT THIS E-MAIL WAS ABOUT
4 SPECIFICALLY, IF YOU GO DOWN?

5 A. IT LOOKS LIKE MR. JACOVETTI WROTE TO YOU: HOW
6 ABOUT LATE TODAY BETWEEN 4 OR 5 WITH A QUESTION MARK.
7 AND YOU RESPONDED: IT WORKS FOR ME.

8 Q. DO YOU SEE -- GO DOWN TO THE THIRD PAGE,
9 PAGE 17. WHAT IS THAT REGARDING, THE E-MAIL ITSELF?

10 A. IT LOOKS LIKE MR. JACOVETTI SENT YOU AN ATTACHED
11 LETTER FROM ANOTHER GENTLEMAN AND ASKED YOU IF YOU
12 SHOULD DISCUSS IT WITH HIM.

13 Q. DO YOU SEE WHERE IT ACTUALLY SAYS: CAN WE SEND
14 HIM A COPY OF THE PENDING LITIGATION?

15 A. IF HE SENDS NO -- YES, I SEE THAT, THAT IS THE
16 FOLLOWING SENTENCE.

17 Q. AND DO YOU SEE THAT THIS WAS ALSO SENT TO
18 MR. SHARGEL?

19 A. WELL, I SEE THAT THE RESPONSE OF WHAT TIME HE
20 WOULD BE AVAILABLE TO SPEAK WAS SENT TO MR. SHARGEL, BUT
21 I DON'T SEE THAT THE ORIGINAL E-MAIL WAS SENT TO
22 MR. SHARGEL. AT LEAST IT DOES NOT SHOW IT IN THE
23 EXHIBIT THAT IS PROVIDED.

24 Q. THAT IS FINE. SO THAT IT'S YOUR UNDERSTANDING
25 THAT THIS -- WERE YOU MADE AWARE OF THE PHONE CALL THAT

1 TOOK PLACE, I GUESS, FEBRUARY 28TH?

2 A. I DON'T RECALL BEING MADE AWARE OF THAT PHONE
3 CALL.

4 Q. DO YOU HAVE ANY REASON TO BELIEVE A PHONE CALL
5 DID NOT OCCUR FEBRUARY 28TH?

6 A. NO, I DON'T, BUT I DON'T SEE THAT THIS E-MAIL
7 WAS SENT TO MR. SHARGEL BASED ON WHAT WAS PROVIDED IF
8 THAT'S THE QUESTION.

9 Q. YOU REPLIED TO THE E-MAIL, CORRECT?

10 A. I'M SORRY?

11 Q. YOU RESPONDED TO THE E-MAIL, THOUGH, THAT'S
12 CORRECT?

13 A. WELL, MR. SHARGEL RESPONDED TO THE E-MAIL IF THE
14 TIME BETWEEN 4 OR 5 WOULD WORK, AND HE SAID IT WORKS FOR
15 ME AS WELL.

16 Q. OKAY. THAT IS FINE.

17 MR. ARTOM-GINZBURG: I WOULD LIKE TO
18 OBJECT, YOUR HONOR. I WOULD LIKE AN OFFER OF PROOF AS
19 TO WHAT THIS HAS TO DO WITH EITHER OF THE CASES AT
20 ISSUE.

21 THE COURT: WHO IS SPEAKING?

22 MR. ARTOM-GINZBURG: THIS IS LIONEL
23 ARTOM-GINZBURG. I'M ON MUTE. I'M SPEAKING THROUGH
24 MR. YASHAYEV'S PHONE. I WOULD LIKE AN OFFER OF PROOF AS
25 TO -- I DON'T SEE ANYTHING IN THESE E-MAILS THAT RELATE

1 -- THIS RELATES AT ALL TO EITHER THE SHELTON OR THE
2 JACOVETTI MATTERS.

3 THE COURT: I DON'T NEED TO GET INTO
4 THAT. I MEAN, I SEE WHAT THIS IS, AND YOU CAN
5 CERTAINLY REDIRECT, I WILL LET MR. ARTOM-GINZBURG,
6 REDIRECT BUT I DON'T THINK WE NEED TO DO THAT.

7 GO AHEAD, MR. THOMAS.

8 MR. THOMAS: I WOULD LIKE TO SUBMIT THIS
9 IN AS EXHIBIT 6.

10 THE COURT: SO EXHIBIT 6, JUST SO WE ARE
11 CLEAR THEN, IS PAGES 16 AND 17 OF THE PDF.

12 DOES ANYBODY HAVE ANY OBJECTION TO THAT
13 COMING IN?

14 MR. ARTOM-GINZBURG: I WILL REITERATE MY
15 OBJECTION. I DON'T THINK THAT THERE IS PROOF THAT THIS
16 RELATES TO EITHER OF THE CASES THAT ARE BEFORE YOUR
17 HONOR. I THINK THIS HAS TO DO WITH ANOTHER MATTER
18 ENTIRELY.

19 THE COURT: ALL RIGHT. I'M GOING TO
20 OVERRULE THAT OBJECTION, AND I WILL ADMIT IT INTO
21 EVIDENCE.

22 MR. REO: YOUR HONOR, JUST TO PRESERVE
23 IT, I WOULD ALSO LIKE TO OBJECT ON RELEVANCY AND
24 FOUNDATION.

25 THE COURT: OKAY. THE OBJECTION IS

1 OVERRULED. OKAY.

2 THAT IS PAGES 16 AND 17.

3 (EXHIBIT 6, PAGES 16 AND 17 OF THE
4 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

5 GO AHEAD, MR. THOMAS.

6 MR. THOMAS: THANKS, YOUR HONOR.

7 BY MR. THOMAS:

8 Q. MR. YASHAYEV, I'LL REFER YOU NEXT TO PAGE 43.

9 A. OKAY.

10 Q. AND DO YOU SEE WHAT THIS E-MAIL IS,
11 MR. YASHAYEV?

12 LET ME START OVER. DO YOU SEE WHAT IT IS
13 DATED, FIRST?

14 A. JANUARY 27, 2020.

15 Q. AND DO YOU SEE THAT IT WAS INITIALLY SUBMITTED
16 TO MR. JACOVETTI AND MR. SHARGEL?

17 A. LET ME SEE. IT LOOKS LIKE IT WAS SENT FROM YOU
18 TO MR. JACOVETTI AND YOU CC'ED MR. SHARGEL.

19 Q. WERE YOU MADE AWARE OF THE FACT THAT THIS MOTION
20 TO RECONSIDER WAS BEING FILED ON THE 27TH BY EITHER OF
21 THOSE TWO?

22 A. I DON'T SEE ANYTHING SAYING THAT THERE IS --
23 THERE IS JUST A SUBJECT THAT SAYS MOTION TO RECONSIDER.

24 Q. DO YOU PERSONALLY REMEMBER BEING INFORMED THAT
25 THIS WAS BEING FILED? IS ALL I'M ASKING.

1 A. NO, I DON'T.

2 Q. DO YOU REMEMBER US HAVING A DISCUSSION REGARDING
3 RECORDINGS FROM MR. SHELTON?

4 A. I DO.

5 Q. DO YOU REMEMBER WHAT WE WERE GOING TO BE DOING
6 WITH THOSE RECORDINGS?

7 A. I REMEMBER WE SENT TO YOU SOME RECORDINGS THAT
8 -- WE OBTAINED SOME RECORDINGS, AND WE ASKED YOU IF
9 THESE WOULD BE RELEVANT TO THE CASE, AND YOU EXPLAINED
10 TO US THAT YOU WOULD SUBMIT THEM AND TRY TO BRING SOME
11 RELEVANCE OUT OF THEM.

12 Q. GIVE ME ONE SECOND.

13 MR. THOMAS: I WOULD LIKE TO MOVE IN
14 PAGE 43 AS EXHIBIT 7.

15 THE COURT: IT RUNS ON TO PAGE 44, IT
16 LOOKS TO ME.

17 MR. THOMAS: CORRECT, YOUR HONOR.

18 THE COURT: ANYBODY HAVE ANY OBJECTION?

19 MR. ARTOM-GINZBURG: I WOULD LIKE TO
20 WITHHOLD THE OBJECTION AT THIS TIME ONLY BECAUSE I'M
21 LOOKING AT THE ACTUAL E-MAILS IN MY CLIENT'S FOLDER.
22 AND THIS E-MAIL WAS NEVER RECEIVED BY MR. SHARGEL. SO I
23 WITHHOLD THE OBJECTION.

24 THE COURT: I CAN'T HAVE YOU TESTIFY,
25 MR. ARTOM-GINZBURG, AS TO WHAT IS THERE AND WHAT IS NOT.

1 MR. ARTOM-GINZBURG: I WILL -- AT THIS
2 TIME I WOULD ASK YOUR HONOR TO HOLD FROM ADMITTING IT
3 UNTIL I HAVE HAD AN OPPORTUNITY TO EXAMINE MR. SHARGEL.

4 THE COURT: I WILL DO THAT. I WILL
5 WITHHOLD ADMISSION ON EXHIBIT 7 FOR NOW UNTIL WE GET TO
6 MR. SHARGEL'S TESTIMONY, ALL RIGHT, GIVEN THAT, I DON'T
7 THINK AT THIS POINT AT LEAST WE HAVE A FOUNDATION FOR
8 MR. YASHAYEV THAT HE EVER SAW THIS E-MAIL.

9 GO AHEAD, MR. THOMAS.

10 MR. THOMAS: THAT BRINGS US UP TO THE
11 NEXT ONE, PAGE 59, YOUR HONOR. MR. YASHAYEV ACTUALLY
12 STARTED TO LAY A FOUNDATION FOR IT. PAGE 59.

13 THE WITNESS: I'M ON THIS PAGE.

14 BY MR. THOMAS:

15 Q. DO YOU SEE WHAT THIS E-MAIL IS? I'M SORRY. DO
16 YOU SEE WHAT DATE THIS E-MAIL IS FROM?

17 A. JANUARY 30TH, 2020.

18 Q. AND CAN YOU TELL ME WHAT YOU BELIEVE THIS E-MAIL
19 IS?

20 A. IT LOOKS LIKE THE SUBJECT IS SHELTON RECORDINGS.

21 Q. DO YOU SEE WHAT THE ATTACHMENTS ARE?

22 A. I'M SORRY?

23 Q. DO YOU SEE WHAT THE ATTACHMENTS ARE?

24 A. YEAH, IT LOOKS LIKE IT'S SUBJECT LINES TO
25 VARIOUS RECORDINGS THAT WERE SENT OVER TO YOU BY

1 MR. SHARGEL.

2 Q. AND WERE THESE THE INITIAL RECORDINGS THAT WE
3 WERE DISCUSSING AS A BASIS FOR THE MOTION TO RECONSIDER
4 BASED ON YOUR RECOLLECTION?

5 A. I DON'T RECALL IF WE WERE USING THEM TO DISCUSS
6 A MOTION TO RECONSIDER. I REMEMBER I WAS PROVIDING THE
7 RECORDINGS AND YOU STATING THAT YOU WILL TRY TO USE THEM
8 TO GET A FAVORABLE OUTCOME IN THE CASE FOR US. IT WAS A
9 VERY BROAD KIND OF ANALYSIS, FROM THE WAY I UNDERSTOOD
10 IT AT LEAST.

11 Q. OKAY. IN TERMS OF --

12 MR. THOMAS: I'M SORRY, CAN I MOVE THIS
13 IN AS EXHIBIT -- SHALL I SAY EXHIBIT 8 FOR NOW?

14 THE COURT: IT'S EXHIBIT 8, BUT I DON'T
15 SEE THAT YOU HAVE LAID A FOUNDATION BECAUSE I'M NOT SURE
16 THAT MR. YASHAYEV SAID HE EVER SAW THIS E-MAIL.

17 MR. THOMAS: I WILL WAIT FOR NOW.

18 THE COURT: CONTINUE TO MARK IT AS
19 EXHIBIT 8 FOR IDENTIFICATION PURPOSES, JUST PAGE 59 OF
20 THE PDF. I'M NOT GOING TO ADMIT IT AT THIS POINT.

21 MR. THOMAS: THAT'S FINE. I WILL JUST
22 REFER TO IT AS 8, AND THEN I WILL DISCUSS IT WITH
23 MR. SHARGEL AS WELL.

24 BY MR. THOMAS:

25 Q. MR. YASHAYEV, IF YOU CAN, CAN YOU REFER TO

1 PAGE 39.

2 A. YES.

3 Q. LOOKS LIKE IT'S AN E-MAIL DATED JULY 17TH.

4 A. YES.

5 Q. AND DO YOU SEE THAT IS -- ACTUALLY IT GOES ON TO
6 PAGE 42. DO YOU SEE THAT ENTIRE CHAIN OF E-MAILS?

7 A. IT'S VERY HARD TO READ, BUT I SEE THAT IT'S A
8 LOT OF E-MAILS BACK AND FORTH. YES.

9 Q. WHEN YOU SAY IT'S HARD TO READ, IS THAT AN ISSUE
10 ON THE COMPUTER OR CAN YOU JUST -- WHAT DO YOU MEAN,
11 IT'S HARD TO READ?

12 A. NO. THERE IS JUST A LOT GOING ON. THAT IS WHAT
13 I MEANT.

14 Q. IF YOU GO TO PAGE 3 AT THE VERY BOTTOM, DO YOU
15 SEE AN E-MAIL WHERE IT SAYS: ON FRIDAY, JUNE 19TH,
16 ATTACHED ABOUT MID PAGE?

17 A. ON FRIDAY, JUNE 19TH. I SEE ON FRIDAY, JUNE 19,
18 2020.

19 Q. SO THAT SPECIFICALLY IS THE START OF THIS CHAIN
20 BASED OFF OF THE E-MAILS. IS THAT FAIR TO SAY?

21 A. THIS IS A FORWARDED E-MAIL, SO UNLESS SOMETHING
22 WAS THERE AND IT WAS DELETED PRIOR, THEN THIS WOULD BE
23 THE FIRST DATE THAT IS AVAILABLE. YEAH.

24 Q. DO YOU ACTUALLY SEE AT THE TOP OF THAT PAGE
25 WHERE YOU ACTUALLY RESPONDED THAT YOU ARE OKAY WITH THE

1 APPEAL BECAUSE YOU UNDERSTAND WE ARE CURRENTLY IN
2 DEFAULT?

3 A. LET ME SEE.

4 Q. IT WAS SENT JUNE 19TH.

5 A. AT THIS TIME THIS IS WHEN -- THIS IS GOING BACK
6 TO WHAT I SAID PREVIOUSLY. THIS IS WHEN I REVIEWED WHAT
7 YOU SENT OVER AND WHEN I SAID "I UNDERSTAND WE ARE
8 CURRENTLY IN DEFAULT," THAT WAS A QUESTION FORMULATED TO
9 YOU TO VERIFY THAT WE ARE IN FACT IN DEFAULT, BECAUSE
10 BASED ON THE INFORMATION YOU SENT OVER, I DON'T REMEMBER
11 EXACTLY WHAT IT WAS, BUT I WAS ASKING A QUESTION IF WE
12 ARE CURRENTLY IN DEFAULT.

13 Q. WHO DID YOU ADDRESS THAT E-MAIL TO?

14 A. IT LOOKS LIKE I WAS RESPONDING TO AN E-MAIL I
15 RECEIVED FROM MR. JACOVETTI AND BARRY, BUT I'M ASSUMING
16 YOU WERE ON THE E-MAIL CHAIN AS WELL, SO IT WAS
17 ADDRESSED TO EVERYBODY INVOLVED IN THAT E-MAIL.

18 Q. SO IF YOU LOOK AT THE FIRST E-MAIL ON THIS
19 CHAIN, IT SAYS ON FRIDAY JUNE 19TH, 2020 AT 9:55 A.M.
20 WHO IS IT FROM?

21 A. IT'S FROM YOU, BUT IT DOES NOT SHOW WHO IT WAS
22 TO.

23 Q. AND IT'S STILL RESPONDED TO BY YOU, AND THEN YOU
24 ARE RESPONDING TO THE SAME E-MAIL, WHICH MEANS LIKE I
25 GOT IT, BUT YOU ARE RESPONDING TO BARRY AND ROBERT, IS

1 THAT CORRECT?

2 A. CORRECT. BUT AGAIN I ONLY SEE THIS SPECIFIC
3 CHAIN. I WOULD LIKE TO LOOK AT MY ACTUAL E-MAILS AND
4 SEE IF I HAVE THE SAME CHAIN BECAUSE I'M NOT SURE, YOU
5 KNOW, THE FORMAT OF WHAT IS PRESENTED BECAUSE IT COULD
6 BE THAT IT APPEARS ONE WAY ON YOUR END AND ANOTHER WAY
7 ON MY TABLET, EXCUSE ME.

8 Q. WITHOUT GOING THROUGH EACH AND EVERY ONE,
9 THERE'S A LENGTHY CHAIN OF E-MAILS, I GUESS ON PAGE 40.

10 A. IF I COULD JUST SAY SOMETHING. I SEE THERE THE
11 OTHER E-MAIL ON JUNE 19, 2020, AT 9:55. THE ACTUAL
12 ORIGINAL E-MAIL YOU SENT OVER TO MR. SHARGEL,
13 MR. JACOVETTI AND MYSELF, WHERE YOU STATE THAT THE COURT
14 DENIED THE MOTION TO RECONSIDER AND USED A RULE OF
15 EVIDENCE TO DO SO, WHICH WAS WHOLLY IMPROPER, AS WELL AS
16 INTENTIONALLY MISCITING A RULE WE CITED TO, THEN
17 CLAIMED THAT IT DID NOT EXIST.

18 Q. MR. YASHAYEV, I DID NOT ASK YOU TO READ THE BODY
19 OF THE E-MAIL, JUST ACKNOWLEDGING YOU GOT IT. SO IT
20 SOUNDS LIKE YOU DID GET IT. DO YOU REMEMBER RECEIVING
21 THAT E-MAIL?

22 A. YES. BUT THE OTHER THING HERE IS THAT THIS IS
23 -- I'LL SUBMIT BLANKET OBJECTIONS TO THIS --
24 POST-JUDGMENT DISCOVERY, KEEP FIGHTING HIM ON THAT AS
25 WELL.

1 Q. YOU ARE RIGHT. THAT IS ALL PART OF IT. I DID
2 NOT REALLY ASK YOU FOR THAT DISCUSSION, THOUGH. IF WE
3 NEED IT READ INTO THE RECORD, WE CAN. WHAT I'M ASKING
4 YOU --

5 A. I THINK IT IS IMPORTANT BECAUSE YOU ARE ASKING
6 US IF WE RECEIVED AN E-MAIL STATING THAT WE KNEW ABOUT A
7 JUDGMENT. WE RECEIVED THIS E-MAIL, WHICH DOES NOT
8 REALLY TELL US THAT WE HAVE HAD A JUDGMENT. AND MY
9 RESPONSE WAS BASED ON THE FACT THAT I WAS ASKING YOU A
10 QUESTION IF WE HAD A JUDGMENT OR NOT.

11 Q. SO YOU'RE SAYING THAT THE FACT THAT I SAID THE
12 COURT DENIED THE MOTION TO RECONSIDER, YOU DON'T
13 UNDERSTAND THAT THAT WAS BASED ON A JUDGMENT?

14 A. NO. BECAUSE IT COULD HAVE BEEN A
15 RECONSIDERATION OF A MOTION OR ANYTHING ELSE THAT -- OR
16 EVIDENCE THAT WE SUBMITTED.

17 Q. OKAY. SURE. OKAY.

18 AGAIN, WITHOUT GOING THROUGH THE ENTIRE
19 CHAIN OF E-MAILS FROM -- ON PAGE 2, WILL YOU ACKNOWLEDGE
20 THERE'S A CHAIN OF E-MAILS GOING FROM JUNE 19TH THROUGH
21 JUNE 24TH ON PAGE 2? IS THAT CORRECT?

22 A. WELL, I'M ON PAGE 40 RIGHT NOW SO --

23 Q. IF YOU LOOK AT PAGE 40, IT GOES JUNE 19TH
24 THROUGH JUNE 24TH, IS THAT CORRECT? YOU HAVE TO READ IT
25 BACKWARDS.

1 A. IT LOOKS LIKE THE LAST E-MAIL WAS JULY 17TH,
2 2020 ACTUALLY.

3 Q. THAT IS FINE. THAT IS ACTUALLY ON THE NEXT
4 PAGE, BUT THAT'S FINE, THAT IS WHERE I WAS GETTING. SO
5 YES, IT GOES TO JULY 17TH. IT SAYS HERE THAT YOU AND
6 BARRY ARE GOOD FOR A CALL MONDAY AT 3:00 P.M. ANY
7 REASON TO BELIEVE THAT CALL DID NOT OCCUR OR DO YOU
8 REMEMBER THAT SPECIFIC CALL?

9 A. I AM NOT AWARE OF ANY REASON TO BELIEVE THAT IT
10 DID NOT OCCUR, BUT I THINK --

11 Q. IS THAT CALL LISTED?

12 A. IT OCCURRED. IT LOOKED LIKE IT WAS A CALL FOR
13 ABOUT TWO MINUTES -- TEN MINUTES, TWO MINUTES AND A
14 MINUTE.

15 Q. WHAT ARE YOU REFERRING TO?

16 A. I WAS JUST GOING BY THE SCHEDULE THAT
17 MR. GINZBURG HAD PROVIDED WITH ALL THE PHONE CALLS THAT
18 WE HAVE HAD.

19 Q. OKAY. SO YOU ARE ACKNOWLEDGING THAT THAT CALL
20 DID OCCUR?

21 A. YES.

22 MR. THOMAS: I WOULD LIKE TO SUBMIT THIS
23 E-MAIL AS EXHIBIT 9.

24 THE COURT: ANYBODY HAVE ANY OBJECTIONS?

25 MR. ARTOM-GINZBURG: NO OBJECTION.

1 THE COURT: ALL RIGHT. SO THAT EXHIBIT 9
2 WILL BE ADMITTED.

3 (EXHIBIT 9, PAGES 39 TO 42 OF THE
4 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

5 THE WITNESS: I DON'T KNOW IF IT'S
6 RELEVANT BUT I DO BELIEVE THAT THOSE PHONE CALLS WERE IN
7 REFERENCE TO US GETTING A BOND TO KIND OF PUT A PAUSE ON
8 ANY COLLECTION ACTIVITY ONCE WE KIND OF CAME TO THE
9 REALIZATION THAT WE HAVE A JUDGMENT.

10 BY MR. THOMAS:

11 Q. SO I ACTUALLY WANTED TO DISCUSS THAT NEXT.
12 THERE WAS ACTUALLY A SET OF CALLS BACK IN APRIL. IF YOU
13 LOOK -- ACTUALLY, DO YOU SEE WHERE THERE WAS AN E-MAIL
14 -- ACTUALLY REFERRING TO MR. ARTOM-GINZBURG'S ITEM -- AN
15 E-MAIL APRIL 23RD?

16 A. APRIL 23RD?

17 Q. WAS SENT OVER.

18 THE COURT: WHAT ARE YOU LOOKING AT,
19 MR. THOMAS?

20 MR. THOMAS: MR. ARTOM-GINZBURG'S
21 SUMMARY OF TELEPHONE RECORDS.

22 THE COURT: SO EXHIBIT 1.

23 MR. THOMAS: YES.

24 THE COURT: OKAY.

25 BY MR. THOMAS:

1 Q. WHERE IT ACTUALLY SAYS THERE WAS AN E-MAIL APRIL
2 23RD. DO YOU SEE THAT?

3 A. APRIL 23RD E-MAILING CERTIFICATION FOR
4 JACOVETTI. YES, I SEE THAT.

5 Q. AND DO YOU ACKNOWLEDGE THAT THERE WAS A PHONE
6 CALL THE DAY BEFORE THAT E-MAIL OCCURRED?

7 A. I DON'T RECALL THE EXACT DATE, BUT I DON'T KNOW
8 IF WE HAD A PHONE CALL ON APRIL 22, 2020.

9 Q. DO YOU REMEMBER THAT WE HAD A PHONE CALL APRIL
10 22, 2020?

11 A. I SAID I DON'T REMEMBER.

12 Q. OKAY. GOOD ANSWER.

13 ONE SECOND.

14 DO YOU REMEMBER THAT WE SPECIFICALLY
15 DISCUSSED EITHER THE 23RD OR THE DAY AFTER THAT WAS
16 RECEIVED, THE APPEAL AND A POTENTIAL BOND AS WELL AS A
17 POTENTIAL PROTECTIVE ORDER BEING SUBMITTED ON APRIL
18 24TH?

19 A. AS FAR AS A BOND AND THE PROTECTIVE ORDER ON
20 APRIL 23RD, NO, I DON'T REMEMBER.

21 Q. DO YOU REMEMBER ON APRIL 24TH WE SPECIFICALLY
22 DISCUSSED A PROTECTIVE ORDER AND A BOND, AND THEN A
23 BOND, IF GRANTED, WOULD STAY THE ACTION?

24 A. I DON'T REMEMBER US HAVING THAT CONVERSATION.
25 MAYBE THAT WAS A CONVERSATION THAT WAS HAD WITH SOMEBODY

1 ELSE. FROM WHAT I HAVE SAID PREVIOUSLY, I ONLY FOUND
2 OUT ABOUT THE JUDGMENT AND THE WHOLE THING WITH THE BOND
3 FURTHER ON IN LIKE JUNE, AROUND JUNE, JULY.

4 Q. WELL, YOU JUST DISCUSSED THE BOND, CORRECT? DO
5 YOU REMEMBER HAVING THAT DISCUSSION?

6 A. WE'VE HAD A DISCUSSION ABOUT THE BOND AROUND THE
7 SAME TIME WHEN WE HAD FOUND OUT THAT WE HAVE A JUDGMENT,
8 WHICH WAS BACK IN JULY, I BELIEVE, JUNE, JULY.

9 Q. DO YOU REMEMBER EVER DISCUSSING WITH BARRY
10 SPECIFICALLY APPLYING FOR A BOND?

11 A. AROUND JULY 20TH I REMEMBER SPEAKING TO BARRY IN
12 REFERENCE TO GETTING A BOND, AND WE -- YOU KNOW, WE
13 LOOKED INTO GETTING ONE, AND WE WERE UNABLE TO GET ONE.

14 Q. OKAY. BUT YOU DON'T, FOR THE RECORD, REMEMBER
15 HAVING THAT DISCUSSION PRIOR TO THAT TIME.

16 A. I DON'T.

17 Q. OKAY. DO YOU REMEMBER -- I'M GOING TO REFER TO
18 PAGE 57. LET ME KNOW WHEN YOU ARE THERE.

19 A. I'M THERE.

20 Q. DO YOU REMEMBER RECEIVING THIS E-MAIL?

21 A. I DON'T REMEMBER RECEIVING IT, BUT I'M NOT
22 DENYING THAT I RECEIVED IT BASED ON THE FACT THAT IT
23 LOOKS LIKE I DID. I JUST DON'T REMEMBER THIS EXACT
24 E-MAIL.

25 Q. DID YOU DOWNLOAD THE LINK TO REVIEW THE E-MAIL

1 IN ANY WAY?

2 A. I PERSONALLY DON'T RECALL LISTENING TO ANY OF
3 JS-1 OR JS-2 AND 3. THAT LOOKS LIKE IT WAS SENT OVER TO
4 YOU BY MR. O'HARE.

5 Q. CORRECT.

6 MR. THOMAS: I HAVE NO MORE QUESTIONS FOR
7 MR. YASHAYEV AT THIS TIME. I TAKE THAT BACK. ONE
8 MORE -- ONE MORE SET OF QUESTIONS. SORRY.
9 BY MR. THOMAS:

10 Q. CAN YOU LOOK AT PAGE 1 TO THE DOCUMENTS I SENT
11 OVER?

12 A. OKAY.

13 Q. BEFORE I DO THAT, I WOULD LIKE TO LABEL PAGE 57
14 SEPTEMBER 18TH E-MAIL AS EXHIBIT 10.

15 THE COURT: I THINK IT IS ACTUALLY 57 AND
16 58 OF YOUR PDF IS THE COMPLETE DOCUMENT. DOES ANYBODY
17 HAVE ANY OBJECTION TO ITS ADMISSION?

18 MR. REO: I OBJECT ON THE BASIS THAT THE
19 AUTHOR, MR. MICHAEL O'HARE, IS NOT HERE TO BE EXAMINED.
20 HE IS NOT A PARTY TO THE ACTION, AND WE DON'T KNOW THAT
21 HE ACTUALLY WROTE THIS OR WHERE IT ACTUALLY ORIGINATED
22 FROM. AND I OBJECT ON RELEVANCY.

23 MR. THOMAS: I AM SUBMITTING IT FOR THE
24 BASIS TO SHOW THAT IT WAS SENT TO MR. YASHAYEV AS WELL
25 AS MR. SHARGEL.

1 MR. REO: THEN, ON THAT BASIS, I WOULD
2 NOT OBJECT IF THAT'S THE ONLY REASON IT'S BEING OFFERED.

3 THE COURT: I'M GOING TO ADMIT IT. SO
4 EXHIBIT 10, WHICH IS PAGES 57 AND 58, WILL COME IN.

5 (EXHIBIT 10, PAGES 57 AND 58 OF THE
6 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.) .

7 BY MR. THOMAS:

8 Q. MR. YASHAYEV, DID MR. SHARGEL TELL YOU THAT I
9 HAD CALLED YOU OR ACTUALLY HAD CALLED HIM BACK ON
10 OCTOBER 28TH -- I'M SORRY, SEPTEMBER 28TH.
11 SEPTEMBER 28TH.

12 A. IN REGARDS TO JUST A CONVERSATION?

13 Q. WERE YOU FAMILIAR WITH THE FACT THAT THERE WAS A
14 CALL THAT TOOK PLACE ON SEPTEMBER 28TH?

15 A. I'M NOT EXACTLY SURE. IF YOU TELL ME MAYBE WHAT
16 THE CALL WAS ABOUT, I COULD TELL YOU IF I REMEMBER
17 RECEIVING THE CALL OR NOT.

18 Q. IT WAS REGARDS THE HEARING BEING ADJOURNED.
19 WERE YOU FAMILIAR WITH THAT?

20 A. YES, I REMEMBER THERE BEING SOMETHING ABOUT A
21 HEARING BEING PUSHED BACK THAT WAS SUPPOSED TO HAPPEN AT
22 AN EARLIER TIME.

23 Q. SO YOU WERE INFORMED AT THAT TIME THAT THAT
24 HEARING WAS ADJOURNED, CORRECT?

25 A. CORRECT. THERE WAS -- I BELIEVE THERE WAS

1 SOMETHING THAT WAS GOING ON WHERE THEY COULD NOT.

2 Q. I'M SORRY. SAY THAT AGAIN?

3 A. I BELIEVE THAT SOME OTHER CIRCUMSTANCES
4 PREVENTED THAT HEARING FROM HAPPENING.

5 Q. OKAY.

6 IN REGARDS TO -- I'LL NOW REFER YOUR
7 ATTENTION TO PAGE 1. CAN YOU TELL ME WHAT YOU DID ON
8 THE DAY OF OCTOBER 2ND IN REGARDS TO THIS CASE
9 SPECIFICALLY?

10 A. I DON'T REMEMBER EXACTLY WHAT I DID ON
11 OCTOBER 2ND. I HAVE TO GO BACK AND REVIEW IT, BUT IT
12 LOOKS LIKE THIS E-MAIL IS FROM OCTOBER 15TH.

13 Q. IT IS. WHEN DID YOU HIRE MR. -- I'M TRYING TO
14 MAKE SURE THAT I DON'T ASK QUESTIONS THAT IMPINGE ON
15 ATTORNEY-CLIENT PRIVILEGE.

16 DID YOU PERSONALLY HIRE
17 MR. ARTOM-GINZBURG?

18 A. I LOST YOU FOR A SECOND.

19 Q. DID YOU PERSONALLY HIRE MR. ARTOM-GINZBURG?

20 A. I HIRED HIM TOGETHER WITH MR. SHARGEL AS -- BOTH
21 OF US TOGETHER.

22 Q. WITHOUT DIVULGING ANY COMMUNICATION IN REGARDS
23 TO IT, DID YOU PERSONALLY SIGN THE DOCUMENT THAT -- TO
24 HIRE MR. ARTOM-GINZBURG?

25 A. I BELIEVE WE SIGNED THE STANDARD, YOU KNOW,

1 RETAINER.

2 Q. DID YOU PERSONALLY SIGN IT?

3 A. I BELIEVE SO.

4 Q. IN REGARDS TO THE APPEAL IN THIS MATTER, DID YOU
5 SPECIFICALLY DISCUSS THE APPEAL OF MR. ARTOM-GINZBURG?

6 A. NOT ANYTHING ASIDE OF US GOING OVER AND SEEING
7 WHAT MOTIONS AND THINGS WERE FILED. WE DID NOT DISCUSS
8 FILING AN APPEAL AT THIS PRESENT TIME OR MOVING FORWARD
9 OR ANYTHING LIKE THAT.

10 Q. DID YOU DISCUSS THE CURRENTLY PENDING APPEAL
11 WITH MR. ARTOM-GINZBURG ON THIS MATTER?

12 A. NO, I DON'T BELIEVE SO. I THINK MAYBE JUST SAW
13 IT, BUT WE DIDN'T DISCUSS ANY SPECIFICS ABOUT IT.

14 Q. YOU ARE AWARE THAT THERE WAS AN APPEAL FILED IN
15 THIS MATTER, CORRECT?

16 A. WELL, I BECAME AWARE FURTHER DOWN THE LINE.

17 Q. WHEN MR. SHARGEL PAID FOR THE APPEAL, YOU ARE
18 FAMILIAR THAT IT WAS GOING TO BE FILED, IS THAT CORRECT?

19 A. THAT'S CORRECT. WE WERE NOT AWARE OF WHAT THE
20 APPEAL WAS FOR.

21 Q. OKAY. SO THAT MOTION TO RECONSIDER DISCUSSION
22 THAT WE HAD, ARE YOU FAMILIAR WITH THAT, WHERE YOU TRIED
23 TO READ THE WHOLE THING IN THE RECORD. WERE YOU
24 FAMILIAR WITH THAT E-MAIL?

25 A. I REMEMBERED IT NOW AFTER READING IT.

1 Q. SO YOUR UNDERSTANDING THAT THAT SPECIFICALLY WAS
2 THE BASIS FOR WHAT WE WERE FILING THE APPEAL ON,
3 CORRECT?

4 A. YOU ARE REFERRING TO THE JUNE 19TH E-MAIL?

5 Q. YES.

6 A. I BELIEVE THAT THIS WAS AN APPEAL FOR A MOTION
7 TO RECONSIDER, BUT AGAIN, I WAS NOT AWARE THAT THERE WAS
8 ALREADY AN EXECUTED JUDGMENT AGAINST ME, MR. SHARGEL AND
9 OUR COMPANY.

10 Q. DID YOU PARTICIPATE IN THE PREPARATION OF THE
11 RESPONSIVE DOCUMENTS TO THE DISCOVERY?

12 A. WHICH SET OF DISCOVERY? THE INITIAL DISCOVERY
13 OR THE POST-JUDGEMENT DISCOVERY?

14 Q. I'M SPECIFICALLY ASKING ABOUT THE POST-JUDGMENT
15 DISCOVERY.

16 DID YOU PARTICIPATE IN THE COMPILATION OF
17 THOSE THAT DOCUMENT?

18 A. WE DID.

19 Q. I'M SORRY. YOU PARTICIPATED IN THE COMPILATION
20 OF THOSE DOCUMENTS?

21 A. WE DID, BUT I DON'T BELIEVE AT THE TIME WE
22 UNDERSTOOD THAT IT WAS A POST-JUDGMENT DISCOVERY,
23 MEANING THAT THERE WAS A JUDGMENT ALREADY EXECUTED
24 AGAINST US. SO NOW WE WERE DOCKETING OUR OWN DOCUMENTS
25 FOR THAT. THE WAY IT WAS EXPLAINED TO US WAS THAT WE

1 COULD PROVIDE THESE DOCUMENTS AND KIND OF STOP ANY
2 COLLECTION, NOT NEED TO GET A BOND.

3 Q. YOU ARE TALKING ABOUT NOT NEEDING TO GET A BOND.
4 SO WHEN WE SPECIFICALLY DISCUSSED THE BOND, DO YOU
5 REMEMBER WHAT I STATED THE PURPOSE OF THE BOND WAS?

6 A. THE PURPOSE OF THE BOND, THE WAY I UNDERSTOOD
7 IT, WAS THAT THE OPPOSING SIDE CAN'T COLLECT OR GO AFTER
8 ANY TYPE OF MONEY AS A CASE IS PENDING.

9 Q. AND I STATED IF A BOND IS POSTED, THEN IT WOULD
10 STAY THE COLLECTION, CORRECT?

11 A. CORRECT, BUT IT WASN'T -- STILL AT THAT TIME WE
12 JUST DID NOT UNDERSTAND THAT THE JUDGMENT HAS ALREADY
13 BEEN ENTERED. WE BELIEVED THAT THIS WAS IN THE CASE,
14 THAT IF WE LOSE THE CASE AND WE WANT TO FILE AN APPEAL,
15 THEN WE WOULD HAVE SOMETHING TO PROTECT US.

16 Q. SO WHAT DID YOU THINK YOU WERE POSTING THE BOND
17 FOR THEN?

18 A. CAN YOU REPEAT THAT ONE MORE TIME. I'M SORRY.

19 Q. WHAT DID YOU PERSONALLY BELIEVE -- NOT
20 MR. SHARGEL, BECAUSE I WILL ASK HIM AS WELL. WHAT DO
21 YOU THINK YOU WERE POSTING THE BOND FOR?

22 A. TO BASICALLY TO KIND OF HELP EASE THE -- I GUESS
23 THE OPPOSING SIDE AS FAR AS THE CASE, HAVING THEM KNOW
24 THAT BEING MORE LENIENT WITH US IN TERMS OF US GETTING
25 ANSWERS AND THINGS LIKE THAT, AND GIVING US KIND OF THE

1 ABILITY TO SHOW THAT IF WE DO LOSE THE CASE, THEN THERE
2 WOULD BE SOMETHING FOR THEM TO COLLECT.

3 Q. DO YOU REMEMBER -- THAT IS FINE. I WILL ASK
4 MR. SHARGEL ABOUT THAT AS WELL.

5 WHY DID YOU ASK FOR THE WITHDRAWAL OF THE
6 APPEAL?

7 A. YOU ARE TALKING ABOUT LATE IN OCTOBER?

8 Q. YES. OCTOBER 15TH.

9 A. I DON'T REMEMBER EXACTLY WHY. THAT MIGHT BE A
10 BETTER QUESTION FOR MR. SHARGEL.

11 Q. YOU PERSONALLY, YOU STATED IT WAS ON BEHALF OF
12 BOTH OF YOU. DID YOU PERSONALLY ASK HIM TO SEND ME AN
13 E-MAIL TO WITHDRAW THE APPEAL?

14 A. YES, BUT AGAIN -- I REMEMBER DOING IT. I DON'T
15 REMEMBER WHY.

16 Q. SO YOU DON'T UNDERSTAND -- YOU DON'T REMEMBER
17 WHY YOU WITHDREW THE APPEAL, WANTED IT WITHDRAWN?

18 A. CAN YOU REPEAT THE QUESTION ONE MORE TIME.

19 Q. ACTUALLY, I THINK YOU ANSWERED IT ALREADY.

20 MR. THOMAS: NO FURTHER QUESTIONS, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT.

23 BY THE COURT:

24 Q. I JUST HAVE ONE OTHER QUESTION. YOU WERE JUST
25 REFERENCING AGAIN AND I THINK YOU REFERENCED IT EARLIER,

1 THE FACT THAT YOU HAD AT SOME POINT STARTED TO LOOK --
2 INVESTIGATE, I GUESS, THE DOCKET AND SEE WHAT MOTIONS
3 HAD BEEN FILED AND THINGS LIKE THAT. DO YOU REMEMBER
4 WHAT PROMPTED YOU TO DO THAT?

5 A. JUST ASKING MR. THOMAS IF THERE IS ANY UPDATES
6 ON THE CASE AND IF WE NEED TO PROVIDE ANYTHING, NOT
7 REALLY GETTING CLEAR ANSWERS FROM HIM. SO THEN WHEN I
8 WENT ON TO THE DOCKET MYSELF, I SAW THAT THERE'S SOME
9 ACTIVITY ON THE CASE, YOU KNOW. AND WHEN I SAW THAT
10 THERE'S EITHER A MOTION OR SOMETHING LIKE THAT, WE WOULD
11 REFER BACK TO MR. THOMAS, ASK HIM ABOUT IT, AND THE
12 COMMON ANSWER WAS EVERYTHING IS FINE, EVERYTHING IS
13 OKAY.

14 Q. SO IT WAS YOU, NOT MR. SHARGEL, WHO WENT AND
15 LOOKED AT THE DOCKET.

16 A. IT WAS ME AND MR. SHARGEL. WE BOTH LOOKED AT IT
17 INDIVIDUALLY AND SOMETIMES TOGETHER.

18 Q. WAS IT SOMETHING YOU DID REGULARLY OR WAS IT
19 SOMETHING YOU DID SPECIFICALLY BECAUSE OF A CONCERN THAT
20 HAD ARISEN?

21 A. NOT REGULARLY. WE DID IT SPECIFICALLY BECAUSE
22 WE WERE NOT GETTING ANSWERS FROM MR. THOMAS AS FAR AS
23 UPDATES ON THE CASE, WHAT IS GOING ON, IF WE NEED TO
24 PROVIDE ANY ADDITIONAL PAPERWORK OR GIVE ANY TESTIMONY
25 OR ANYTHING LIKE THAT.

1 Q. HOW DID YOU KNOW HOW TO ACCESS THE DOCKET?

2 A. I JUST WOULD GO ON GOOGLE. I WOULD TYPE IN THE
3 NAME OF THE CASE, THE DOCKET NUMBER, BASICALLY, SHELTON
4 VERSUS FCS, AND THEN IT WOULD GIVE YOU VARIOUS WEBSITES
5 THAT HAVE INFORMATION ABOUT THAT.

6 THE COURT: OKAY. ALL RIGHT. THAT IS
7 ALL I HAVE.

8 MR. ARTOM-GINZBURG, DO YOU HAVE ANY
9 REDIRECT FOR MR. YASHAYEV?

10 MR. ARTOM-GINZBURG: I DO NOT, YOUR
11 HONOR.

12 THE COURT: OKAY. MR. REO, ANYTHING
13 FURTHER?

14 MR. REO: NOTHING AT THIS TIME, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. MR. YASHAYEV, I
17 APPRECIATE YOUR TIME.

18 I'M SORRY, MR. SILVESTRO, YES.

19 MR. SILVESTRO: WILL I GET AN OPPORTUNITY
20 TO EXAMINE MR. YASHAYEV?

21 THE COURT: I'M SORRY. GO AHEAD. I
22 APOLOGIZE, BUT GO AHEAD.

23 MR. SILVESTRO: NO PROBLEM. I WILL BE
24 BRIEF.

25 CROSS EXAMINATION

1 BY MR. SILVESTRO:

2 Q. MR. YASHAYEV, YOU REFERRED TO DURING SOME OF
3 YOUR PRIOR TESTIMONY THAT YOU HAD SOME CONVERSATION WITH
4 MY CLIENT, MR. JACOVETTI, IS THAT ACCURATE?

5 A. YES.

6 Q. ARE YOU AWARE THAT THE LAWSUIT THAT -- IN WHICH
7 MR. JACOVETTI WAS PLAINTIFF THAT THERE WAS AN ORIGINAL
8 AND THERE WAS AN AMENDED COMPLAINT?

9 A. NO, I WAS NOT.

10 Q. IF I TOLD YOU THAT THE ORIGINAL COMPLAINT HAD
11 YOU AS A PLAINTIFF AND IT WAS FILED ON JANUARY 9TH OF
12 2020, WOULD YOU HAVE ANY REASON TO BELIEVE THAT THAT WAS
13 NOT ACCURATE?

14 A. NO.

15 Q. THE CONVERSATION THAT YOU HAD WITH MR. JACOVETTI
16 WITH REGARD TO WHETHER OR NOT IT WAS APPROPRIATE FOR YOU
17 TO BE A PARTY, WAS THAT ONE CONVERSATION OR MULTIPLE
18 CONVERSATIONS?

19 A. I BELIEVE IT WAS SEVERAL CONVERSATIONS, AND IT
20 WAS NOT -- SOMETIMES MAYBE NOT THE MAIN TOPIC OF
21 CONVERSATION, BUT IT WAS BROUGHT UP A FEW TIMES.

22 Q. USING THE JANUARY 9TH OF 2020 BENCHMARK WHEN THE
23 ORIGINAL COMPLAINT WAS FILED, CAN YOU TELL THE COURT
24 WHETHER OR NOT ANY OF THOSE CONVERSATIONS THAT YOU HAD
25 WITH MR. JACOVETTI ABOUT THE LAWSUIT, DID THEY PRECEDE

1 JANUARY 9TH OF 2020?

2 A. AGAIN, I JUST WAS AWARE THAT SOMETHING LIKE THAT
3 WAS GOING TO BE FILED. I DON'T REMEMBER THE EXACT DATE
4 OF WHEN IT WAS SUPPOSED TO BE FILED OR, YOU KNOW, WHEN
5 WE SPOKE ABOUT IT BEING FILED. I JUST REMEMBER, YOU
6 KNOW, IT WAS BEING -- SOMETHING THAT WAS BROUGHT UP AND
7 THAT IS ABOUT IT.

8 Q. AND WERE YOU MADE AWARE AT SOME POINT THAT THE
9 COMPLAINT THAT WAS FILED INCLUDED YOU AS A PLAINTIFF?

10 A. ONLY AFTER IT WAS ALREADY FILED.

11 Q. AND THEN SOMETIME AFTER THAT, WERE YOU MADE
12 AWARE THAT AN AMENDED COMPLAINT WAS FILED AND YOU WERE
13 NO LONGER A PARTY?

14 A. YES.

15 Q. AND HOW DID YOU COME BY THAT INFORMATION THAT
16 YOU WERE NO LONGER A PARTY?

17 A. MR. JACOVETTI WAS THE ONE THAT TOLD US ABOUT
18 THAT.

19 Q. DID YOU HAVE ANY CONVERSATIONS DIRECTLY WITH
20 MR. THOMAS ABOUT WHY YOU WERE A PARTY TO THE ORIGINAL
21 COMPLAINT?

22 A. I PERSONALLY DID NOT.

23 Q. OKAY. DO YOU KNOW IF MR. SHARGEL WAS OR HAD
24 SOME CONVERSATIONS DIRECTLY WITH MR. THOMAS ABOUT
25 WHETHER OR NOT IT WAS APPROPRIATE FOR HIM TO BE OR WHY

1 HE WAS A PLAINTIFF IN THE ORIGINAL COMPLAINT?

2 A. I'M NOT SURE. THAT MIGHT BE A BETTER QUESTION
3 FOR MR. SHARGEL.

4 Q. OKAY. THERE WAS SOME DISCUSSION EARLIER ABOUT A
5 CERTIFICATION THAT YOU SIGNED. DO YOU REMEMBER THAT?

6 A. YES.

7 Q. DO YOU HAVE A COPY OF THE CERTIFICATION
8 SOMEWHERE IN FRONT OF YOU?

9 A. I DON'T HAVE IT IN FRONT OF ME. I CAN PULL IT
10 UP IF YOU GIVE ME JUST A MINUTE.

11 MR. SILVESTRO: MR. ARTOM-GINZBURG, COULD
12 YOU PUT A COPY OF THE FULLY EXECUTED CERTIFICATION IN
13 FRONT OF YOUR CLIENT?

14 MR. ARTOM-GINZBURG: YES.

15 THE WITNESS: I HAVE IT IN FRONT OF ME
16 NOW.

17 BY MR. SILVESTRO:

18 Q. PARAGRAPH NUMBER 1 INDICATES: WE HAVE REVIEWED
19 AND DISCUSSED ALL PROCEEDINGS IN THIS MATTER WITH
20 MR. THOMAS AND HAVE A FULL UNDERSTANDING OF WHAT HAS
21 OCCURRED IN THIS MATTER.

22 DID I READ THAT ACCURATELY?

23 A. YOU DID.

24 Q. WHAT DID YOU REVIEW, IF ANYTHING?

25 A. I DON'T REMEMBER REVIEWING ANYTHING. I JUST

1 REMEMBER RECEIVING THE CERTIFICATION AND SIGNING THIS.

2 Q. DID YOU EVER ASK MR. THOMAS ABOUT WHY HE
3 INDICATED -- STRIKE THAT.

4 WAS IT YOUR UNDERSTANDING THAT MR. THOMAS
5 AUTHORED THE CERTIFICATION?

6 A. THAT WAS MY UNDERSTANDING, YES.

7 Q. DID YOU EVER ASK HIM SPECIFICALLY WHY DOES IT
8 SAY THAT I REVIEWED CERTAIN THINGS?

9 A. I DON'T REMEMBER ASKING HIM SPECIFICALLY. I
10 REMEMBER US HAVING A BRIEF CONVERSATION ABOUT THE
11 CERTIFICATION WHERE MR. THOMAS SAID THAT THIS IS
12 BASICALLY TO KEEP ME IN THE CASE, THAT AS FAR AS YOU
13 KNOW, I'VE DONE NOTHING WRONG AND THAT I'M A GOOD GUY
14 KIND OF -- YOU KNOW, PREVIOUSLY TO WHAT I SAID BEFORE,
15 THAT THIS WAS MAYBE SOMETHING TO SHOW THE JUDGE THAT I'M
16 OKAY TO STAY ON THE CASE.

17 Q. WERE YOU EVER TOLD OR WAS THERE ANY INFORMATION
18 THAT WOULD INDICATE THAT YOU WERE TIMING THIS BECAUSE
19 MR. THOMAS WAS IN TROUBLE WITH THE COURT?

20 A. NO.

21 MR. SILVESTRO: NOTHING FURTHER, YOUR
22 HONOR.

23 THE COURT: ALL RIGHT.

24 ANYBODY HAVE ANY FOLLOW-UP,
25 MR. ARTOM-GINZBURG?

1 MR. ARTOM-GINZBURG: NO, YOUR HONOR. I
2 WOULD REQUEST A TEN-MINUTE RECESS BEFORE I CALL
3 MR. SHARGEL.

4 THE COURT: THAT IS FINE.

5 MR. REO, ANY FOLLOW-UP?

6 MR. REO: I HAVE LESS THAN TWO MINUTES OF
7 QUESTIONS AS A FOLLOW-UP AND THEN I WOULD ALSO REQUEST A
8 RECESS AS WELL.

9 THE COURT: GO AHEAD.

10 RECROSS EXAMINATION

11 BY MR. REO:

12 Q. MY QUESTION FOR MR. YASHAYEV. IN DECEMBER OF
13 2018 IN SHELTON V FCS YOU WERE IN DEFAULT FOR A BRIEF
14 PERIOD OF TIME BUT THIS WAS --

15 THE COURT: MR. REO, LET ME STOP YOU.
16 DOES THIS FLOW FROM QUESTIONS ALREADY BEEN ASKED? I
17 WANT TO LIMIT OURSELVES TO WINNOWING DOWN FROM THINGS
18 THAT HAVE ALREADY BEEN COVERED.

19 MR. REO: YES, IT DOES RELATE TO
20 SOMETHING THAT WAS JUST ASKED BY MR. THOMAS.

21 THE COURT: GO AHEAD.

22 BY MR. REO:

23 Q. YOU WERE IN DEFAULT VERY BRIEFLY IN THE CASE,
24 BUT THIS WAS VACATED. IN THE E-MAIL THAT MR. THOMAS HAD
25 ENTERED INTO EVIDENCE, YOU WERE ASKING HIM ABOUT A

1 DEFAULT JUDGMENT. DID HE EVER CORRECT YOUR MISTAKEN
2 VIEW ABOUT WHETHER OR NOT YOU WERE ACTUALLY IN DEFAULT
3 VERSUS SUMMARY JUDGMENT? THIS WOULD BE JULY 2020,
4 BECAUSE IN THE E-MAIL YOU SENT HIM YOU REFERENCE BEING
5 IN DEFAULT. DID HE EVER CORRECT YOUR VIEW THEN THAT YOU
6 WERE NOT IN DEFAULT BUT RATHER WERE IN JUDGMENT VIA
7 SUMMARY JUDGMENT?

8 A. NO. I BELIEVED, YOU KNOW, AT THAT POINT THAT WE
9 WERE STILL IN DEFAULT JUDGMENT.

10 Q. SO WHEN THE DEFAULT WAS VACATED BACK IN 2018,
11 DID HE ADVISE YOU THAT IT HAD BEEN VACATED?

12 A. I DON'T REMEMBER, NO.

13 MR. REO: NOTHING FURTHER.

14 THE COURT: MR. THOMAS, GO AHEAD.

15 MR. THOMAS: IF I MAY VERY BRIEFLY READ
16 -- WHATEVER, JUST ASK LIKE TWO QUESTIONS ON THIS?

17 THE COURT: I'M SORRY. CAN YOU SAY THAT
18 AGAIN.

19 MR. THOMAS: I DON'T KNOW IF IT IS
20 REDIRECT, RECROSS. MAY I JUST ASK TWO QUICK QUESTIONS
21 ON THIS, YOUR HONOR?

22 THE COURT: YES. WITH THE CAVEAT THAT I
23 HAVE TO TELL YOU I DON'T THINK THAT WHAT HAPPENED DURING
24 A PERIOD OF DEFAULT IN 2018 IS RELEVANT TO ANY OF THE
25 PROCEEDINGS IN FRONT OF ME RIGHT NOW.

1 MR. THOMAS: I WILL WITHDRAW THE QUESTION
2 AT THIS POINT. I THINK IT IS CLEAR ON THE RECORD WHAT
3 THAT E-MAIL IS REFERENCING.

4 THE COURT: ALL RIGHT. FINE. WE WILL
5 TAKE A TEN MINUTE RECESS. IT'S 11:32. I'D LIKE TO BE
6 BACK ON THE RECORD BY 11:40. I WANT TO KEEP THIS
7 MOVING. SO PLEASE BE BACK BY 11:40. OKAY?

8 (BREAK TAKEN.)

9 THE COURT: LET'S GO BACK ON THE RECORD.

10 MR. SHARGEL: GOOD MORNING, YOUR HONOR.

11 THE COURT: GOOD MORNING.

12 SO MR. ARTOM-GINZBURG, I GATHER YOU ARE
13 GOING TO CALL MR. SHARGEL NOW?

14 MR. ARTOM-GINZBURG: YES, I AM.

15 THE COURT: GIVE ME ONE SECOND.

16 MR. THOMAS JUST LEFT.

17 WE HAVE MR. THOMAS BACK.

18 THE COURT: I JUST GOT AN E-MAIL FROM
19 JOSHUA THOMAS. HE SAID THAT HIS COMPUTER HAS CRASHED.

20 MR. THOMAS: I JUST JOINED ON MY PHONE.
21 I APOLOGIZE. I GOT A BLUE SCREEN OF DEATH. AND IT IS
22 RESTARTING NOW. I CAN BE ON, BUT MY NOTES ARE ON THE
23 COMPUTER. SO I JUST ASK -- I WANT IT TO RESTART. WE
24 CAN CONTINUE. I DON'T WANT TO DELAY, BUT THAT WAS THE
25 REASON. I APOLOGIZE FOR THAT, YOUR HONOR.

1 THE COURT: ALL RIGHT. WELL, IF YOU ARE
2 TAKING NOTES ON YOUR COMPUTER, HOW LONG IS IT GOING TO
3 GET THE COMPUTER RESTARTED, DO YOU KNOW?

4 MR. THOMAS: IT IS RESTARTING NOW. SO I
5 CAN'T IMAGINE MORE THAN MAYBE ANOTHER FIVE TO TEN
6 MINUTES TOTAL. I HAD ALL MY PDF'S AND EVERYTHING SET UP
7 TOO. SO I WOULD SAY PROBABLY TEN MINUTES TO GET BACK TO
8 WHERE I WAS. I APOLOGIZE FOR THAT, YOUR HONOR.

9 THE COURT: I THINK IT IS IMPORTANT THAT
10 YOU HAVE YOUR NOTES IN FRONT OF YOU. WE WILL TAKE A
11 RECESS. WE WILL STAND IN RECESS FOR TEN MINUTES. I
12 HAVE 11:45. I'D LIKE EVERYBODY BACK ON LINE BY 11:55,
13 TRY TO RESUME. OKAY.

14 MR. THOMAS: THANK YOU, YOUR HONOR.

15 (BREAK TAKEN.)

16 THE COURT: IT LOOKS LIKE WE HAVE
17 MR. THOMAS BACK, SO I THINK WE HAVE ALL THE RELEVANT
18 FOLKS. SO LET'S RESUME. AND WE WILL GO BACK ON THE
19 RECORD, AND MR. ARTOM-GINZBURG, I WILL LET YOU PRESENT
20 MR. SHARGEL.

21 (BARRY SHARGEL, PLAINTIFF'S WITNESS,
22 SWORN.)

23 DIRECT EXAMINATION

24 BY MR. ARTOM-GINZBURG:

25 Q. MR. SHARGEL, WE HAVE HEARD THE TESTIMONY OF YOUR

1 PARTNER. I'M JUST GOING TO GO THROUGH SOME OF THE SAME
2 AREAS THAT I WENT THROUGH WITH HIM AND HOPEFULLY GET
3 THROUGH IT A LITTLE BIT QUICKER.

4 THIS PERIOD OF TIME BETWEEN OCTOBER 8,
5 2019 AND DECEMBER 11TH, WHEN A PARTIAL SUMMARY JUDGMENT
6 WAS GRANTED, I SEE -- FROM YOUR PHONE RECORDS WHICH YOU
7 PROVIDED TO ME, I SEE THREE CALLS OF ONE MINUTE EACH
8 BETWEEN YOU AND MR. THOMAS. DOES THAT COMPORT WITH YOUR
9 MEMORY?

10 A. YES.

11 Q. WERE YOU AWARE THAT A MOTION FOR SUMMARY
12 JUDGEMENT WAS OUTSTANDING?

13 A. NO, I WAS NOT.

14 Q. WERE YOU EVER ASKED TO COMPLETE AN AFFIDAVIT IN
15 OPPOSITION TO IT?

16 A. NEVER.

17 Q. THERE WERE SOME QUESTIONS EARLIER ABOUT WHETHER
18 YOU WERE NOTIFIED ABOUT THE FIRST MOTION FOR
19 RECONSIDERATION. MR. THOMAS -- AND I BELIEVE THIS IS
20 EXHIBIT -- IT IS EITHER EXHIBIT 7 OR EXHIBIT 8 -- HAD
21 PRODUCED AN E-MAIL TO YOU THAT WAS CC'D TO YOU SHOWING A
22 MOTION FOR RECONSIDERATION. DID YOU EVER RECEIVE THAT
23 E-MAIL?

24 A. WILL YOU REPEAT THE QUESTION, PLEASE.

25 Q. ON JANUARY 27TH MR. THOMAS FILED A MOTION FOR

1 RECONSIDERATION. WHEN HE WAS QUESTIONING MR. YASHAYEV,
2 HE HAD PRODUCED AN E-MAIL DATED JANUARY 27TH STATING
3 THAT HERE IS A COPY OF THE MOTION FOR RECONSIDERATION.
4 DID YOU EVER RECEIVE A COPY OF THAT E-MAIL?

5 THE COURT: MR. ARTOM-GINZBURG, WE HAVE
6 IT MARKED FOR IDENTIFICATION. LET'S SHOW IT TO HIM.
7 IT'S EXHIBIT 7, AND IT'S PAGES 43 AND 44 OF THE PDF THAT
8 MR. THOMAS SUBMITTED.
9 BY MR. ARTOM-GINZBURG:

10 Q. IT CONTINUES ON TO THE NEXT PAGE.

11 A. I REMEMBER RECEIVING THE E-MAIL. I DON'T
12 REMEMBER WHAT THE CONTENTS OF THE E-MAIL WAS.

13 Q. WHEN WE LOOKED THROUGH YOUR E-MAILS DURING THE
14 QUESTIONING OF MR. YASHAYEV, DID YOU SEE AN E-MAIL WITH
15 THIS HEADER IN THOSE E-MAILS?

16 A. NO, I DID NOT, NO.

17 Q. CONTINUING FORWARD --

18 THE COURT: MR. ARTOM-GINZBURG, YOUR
19 CAMERA IS NOW OFF OF YOU. I'M JUST LOOKING AT A
20 MICROWAVE. CAN YOU TURN IT?

21 MR. ARTOM-GINZBURG: SORRY.

22 THE COURT: THANK YOU.

23 MR. ARTOM-GINZBURG: PROBLEMS OF THE
24 PANDEMIC PRACTICE OF LAW.
25 BY MR. ARTOM-GINZBURG:

1 Q. CONTINUING -- FOLLOWING THE MOTION FOR
2 RECONSIDERATION I SEE TWO CALLS -- A CALL ON
3 FEBRUARY 4TH, A TEXT MESSAGE ON FEBRUARY 4TH, A CALL ON
4 MARCH 10TH AND THEN AN E-MAIL ON APRIL 23RD. I HAVE
5 GONE THROUGH YOUR PHONE RECORDS AND YOU WENT THROUGH
6 THEM AT SOME LENGTH TOO.

7 DO YOU HAVE ANY OTHER RECORD OR
8 COMMUNICATION WITH MR. THOMAS DURING THAT PERIOD OF
9 TIME?

10 A. NO.

11 Q. THE POST-JUDGMENT DISCOVERY MOTION WAS ORDERED
12 ON MAY 26TH.

13 THE SECOND MOTION FOR RECONSIDERATION WAS
14 FILED ON JUNE 1ST.

15 WERE YOU GIVEN ANY INPUT INTO A MOTION
16 FOR RECONSIDERATION?

17 A. NO, I WAS NOT.

18 Q. WERE YOU GIVEN THE POST-JUDGMENT DISCOVERY AT
19 THAT TIME?

20 A. NO, I WAS NOT.

21 Q. YOU WERE CONTACTED -- ON JUNE 17TH THE ORDER
22 DENYING THE SECOND MOTION FOR RECONSIDERATION CAME IN.
23 ON JUNE 23RD, YOU WERE ASKED TO PAY FOR AN APPEAL. IT
24 WAS SHOWN IN THE RECORDS THAT YOU TEXTED A CREDIT CARD
25 OVER. WERE YOU TOLD WHAT THE APPEAL WAS FOR?

1 A. NO, I WAS NOT.

2 Q. WHAT ISSUES WOULD YOU BELIEVE THAT THE APPEAL
3 WERE CONNECTED TO?

4 A. I WAS THINKING MAYBE IT WAS SOMETHING TO DO WITH
5 THE MOTION THAT JOSH FILED THAT THE JUDGE HAD A PROBLEM
6 WITH. I BELIEVE IT WAS ANYTHING BUT A POST-JUDGMENT
7 DISCOVERY MOTION.

8 Q. IF I COULD TAKE A STEP BACK TO APRIL 23RD WHEN
9 YOU RECEIVED THE CERTIFICATION FOR THE JACOVETTI CASE.
10 WHAT DID YOU BELIEVE THAT DOCUMENT WAS FOR?

11 A. WELL, JOSH CALLED MYSELF AND ROBERT, AND HE TOLD
12 US THAT HE NEEDS US TO SIGN THIS DOCUMENTATION. HE SAYS
13 THAT THE JUDGE IS AGAINST HIM AND THAT THE JUDGE IS
14 BASICALLY NOT LOOKING AT THE MERITS OF THE CASE, BUT HE
15 IS LOOKING AT THE CASE BECAUSE HE DOES NOT LIKE HIM, AND
16 THAT IF WE WANT HIM TO CONTINUE MOVING FORWARD
17 REPRESENTING US, THAT WE NEED TO SIGN THIS. WE SIGNED
18 THE DOCUMENTATION. I JUST FOUND OUT DURING THE
19 TESTIMONY OF MY PARTNER THAT THIS WAS ACTUALLY ME
20 SIGNING SOMETHING THAT HAD TO DO WITH THE CASE THAT I
21 SHOULD NOT HAVE BEEN IN FROM THE GET-GO.

22 Q. AND THAT'S THE JACOVETTI CASE.

23 A. YES, THE JACOVETTI VERSUS SHELTON.

24 Q. AND YOU WERE NOT ASKED TO BE A PLAINTIFF IN THAT
25 CASE.

1 A. NO, WE NEVER ASKED TO BE A PLAINTIFF IN THAT
2 CASE WHATSOEVER.

3 Q. YOU NEVER SAW A COPY OF THE COMPLAINT THAT NAMED
4 YOU AS A PLAINTIFF?

5 A. NO, I DID NOT.

6 Q. DO YOU HAVE ANY IDEA WHAT THE BASIS FOR THAT
7 LAWSUIT WAS?

8 A. I HAD A BRIEF CONVERSATIONS WITH ROBERT ABOUT
9 IT. ROBERT SAID SOMETHING ABOUT DEFAMATION, IF I'M NOT
10 MISTAKEN, AND THAT HE IS PURSUING IT BECAUSE FROM THE
11 BEGINNING, MR. SHELTON INCLUDED ROBERT IN OUR CASE, AND
12 THEN HE TOOK HIM OUT OF THE CASE. AND HE SAID THAT
13 SINCE IT'S PUBLIC INFORMATION THAT NOW WHEN PEOPLE
14 GOOGLE HIS NAME, IT'S PUTTING A TARNISH ON HIS
15 REPUTATION.

16 Q. BUT IT HAD NOTHING AT ALL TO DO WITH YOU OR WITH
17 FCS CAPITAL?

18 A. NO, NOT AT ALL.

19 Q. THE APPEAL WAS FILED ON JUNE 29TH AND THE SAME
20 DAY THERE WAS A MOTION FOR CONTEMPT, AND A MOTION FOR
21 SANCTIONS FILED AGAINST MR. THOMAS. WERE YOU AWARE OF
22 EITHER OF THOSE MOTIONS?

23 A. CAN YOU REPEAT THAT, PLEASE.

24 Q. ON JUNE 29TH THERE WAS A MOTION FOR CONTEMPT AND
25 A MOTION FOR SANCTIONS THAT WERE FILED AGAINST

1 MR. THOMAS BY MR. REO.

2 A. NO, I WAS NOT AWARE OF THOSE.

3 Q. WERE YOU CONTACTED AT ANY POINT BETWEEN
4 JUNE 29TH AND THE MOTION HEARING?

5 A. NO.

6 Q. NOW, ON JULY 20TH YOU RECEIVED AN E-MAIL FROM
7 MR. THOMAS THAT ATTACHED POST-JUDGMENT INTERROGATORIES.

8 A. YES.

9 Q. WAS THAT THE FIRST TIME YOU HEARD ANYTHING ABOUT
10 A JUDGMENT?

11 A. YES. AND WE ALSO HAD A CONVERSATION WITH
12 MR. THOMAS THAT DAY ASKING WHAT CAN WE DO IN ORDER TO
13 STOP COLLECTION ACTIVITY, BECAUSE THIS JUST CAME OUT OF
14 THE BLUE. HE SAID THE FIRST THING YOU CAN DO IS YOU CAN
15 GET A BOND. WE CALLED MULTIPLE BONDSMEN. THEY DO NOT
16 WANT TO DO ANYTHING FOR US. WE THEN CALLED JOSH BACK.
17 JOSH SAID HE HAD A FORMER CLIENT THAT POSTED, I BELIEVE,
18 A 5 PERCENT OR 10 PERCENT BOND OF THE WHOLE THING. HE
19 SAID THAT HE WOULD CONTACT THAT CLIENT, FIND OUT WHO
20 THEY USED AND CALL US BACK. HE CALLED US BACK AND SAID
21 THE JUDGE ORDERED IT TO BE 5 TO 10 PERCENT. IF YOU GUYS
22 WANT TO PUT UP A BOND, YOU HAVE TO PUT UP EVERYTHING.
23 HE ALSO TOLD US THAT IF YOU DON'T WANT ANY COLLECTION
24 ACTIVITY, LET'S PROVIDE HIM WITH SOMETHING, JUST TO KEEP
25 MR. SHELTON AND MR. REO HAPPY. THAT IS WHEN WE PROVIDED

1 ALL THE INFORMATION OUT OF OUR BANK ACCOUNTS, THAT HAD
2 EVERYTHING THAT THEY ASKED FOR ON THAT PIECE OF PAPER.
3 AND WE BASICALLY COMPLIED WITH WHAT JOSH TOLD US WE HAVE
4 TO DO.

5 Q. AND THE BANK ACCOUNTS HAPPENED A COUPLE OF DAYS
6 LATER.

7 A. YES. WE ALSO ASKED JOSH TO REDACT INFORMATION
8 ON THERE THAT SHOULD NOT BE ON THERE BECAUSE WE NEVER
9 KNEW WHERE IT COULD LEAD TO, BECAUSE HE MADE US BELIEVE
10 THAT HE IS JUST SHOWING TO IT MR. REO'S EYES ONLY.

11 Q. HE NEVER INFORMED YOU THAT THIS WOULD BE USED BY
12 THE PLAINTIFF IN HIS COLLECTION ATTEMPTS?

13 A. NO.

14 Q. NOW --

15 A. I ALSO REMEMBER NOW ASKING HIM, WHAT SHOULD WE
16 GIVE? HE SAID GIVE YOUR BUSINESS BANK STUFF BECAUSE
17 THIS HAS TO DO MOSTLY WITH YOUR BUSINESS. YOU DON'T
18 HAVE TO WORRY. THEY ARE NOT REALLY LOOKING TO DO
19 ANYTHING. I JUST WANT TO KEEP THEM AT BAY FOR NOW.

20 Q. NOW, YOU HAD BEEN SUED PERSONALLY IN THIS CASE.

21 A. YES.

22 Q. WERE YOU AWARE THE JUDGEMENT WAS AGAINST YOU
23 PERSONALLY AS WELL?

24 A. NO, NOT UNTIL I PULLED MY CREDIT REPORT, AND I
25 SAW THAT WHEN I TRIED TO PURCHASE A VEHICLE.

1 Q. NOW, YOU BELIEVED YOU HAD A DEFENSE TO THIS
2 CASE, DID YOU NOT?

3 A. YES, WE DID BELIEVE WE HAD A DEFENSE.

4 Q. WHAT WAS THAT DEFENSE?

5 A. FIRST OF ALL, THE PHONE NUMBER THAT MR. SHELTON
6 SAYS THAT WE CALLED, FROM WHAT WE UNDERSTAND, WHAT WE
7 SEE IS A BUSINESS PHONE NUMBER. SO THIS WOULD BE A
8 B-TO-B PHONE CALL. THE COMPANY THAT CALLED HIM AND THE
9 INDIVIDUAL THAT CALLED HIM WAS NOT WORKING FOR OUR FIRM
10 AT THAT TIME. WE SENT MR. THOMAS THAT INFORMATION
11 BECAUSE HE SAID THAT IF YOU COULD PROVE TO ME THAT HE
12 DID NOT WORK FOR YOU, THAT THIS CAN GO AWAY. AND WE DID
13 SEND HIM THAT.

14 ALSO ANOTHER THING WHY WE KNEW WE COULD
15 WIN THE CASE IS THAT THE CALLS THAT WERE BEING MADE,
16 MR. SHELTON ACTUALLY CONSENTED TO THEM WITH THE OTHER
17 GENTLEMAN WHILE HE WORKED IN THE OTHER COMPANY BECAUSE
18 WHEN WE CONFRONTED THAT GENTLEMAN THAT IS WHAT HE SAID,
19 THAT HE HAD PRIOR DEALINGS, WHAT I BELIEVE WAS FORWARD
20 FUNDING OR FAST EVENTS, WHATEVER THE NAME OF THE COMPANY
21 WAS, I DON'T RECALL. THAT GENTLEMAN SAID THAT HE HAD
22 VIVID CONVERSATIONS OFFERING MONEY AND OFFERING
23 DIFFERENT THINGS TO MR. SHELTON, AND MR. SHELTON AND HIM
24 HAVE BEEN GOING FOR MONTHS AND MONTHS AND MONTHS, AND
25 NOW THEY ARE BEST OF FRIENDS.

1 Q. YOU EXPECTED MR. THOMAS TO PUT UP A DEFENSE IN
2 THIS CASE.

3 A. YES.

4 Q. DID HE?

5 A. NO, HE DID NOT. FROM WHAT WE SEE NOW, HE DID
6 NOT. TO BE VERY HONEST WITH YOU, FROM WHAT IT LOOKS
7 LIKE, MR. THOMAS DID NOT DO MUCH OF ANYTHING FOR US,
8 EXCEPT FOR GET US A JUDGMENT.

9 Q. NOW, THE JUDGMENT CAME DOWN ON DECEMBER 11TH,
10 2019. THE MOTION FOR RECONSIDERATION IS JANUARY 27TH.
11 DID MR. THOMAS AT ANY TIME, AFTER THE JUDGMENT CAME
12 DOWN, ASK YOU TO PREPARE AN AFFIDAVIT IN OPPOSITION TO
13 SUMMARY JUDGMENT?

14 A. NO, HE DID NOT.

15 Q. HAS THERE BEEN ANY INDICATION THAT MR. THOMAS
16 ATTEMPTED TO CORRECT THE LACK OF A SUMMARY JUDGMENT
17 FILING?

18 A. NO, NOT TO OUR KNOWLEDGE. NOT TO MY KNOWLEDGE,
19 I SHOULD SAY.

20 Q. JUMPING BACK TO JULY, YOU FOUND OUT ABOUT THE
21 JUDGMENT. YOUR BANK ACCOUNTS HAD BEEN SHUT DOWN. ON
22 JULY 21ST AN OPINION AND AN ORDER CAME DOWN IN REGARDS
23 TO CONTEMPT AND SANCTIONS AGAINST MR. THOMAS FOR FAILURE
24 TO ANSWER DISCOVERY. WERE YOU AWARE OF THAT?

25 A. NO, I WAS NOT. I ACTUALLY HAD A CONVERSATION

1 WITH MR. THOMAS ON THE 22ND AND THAT CONVERSATION
2 ACTUALLY WAS A FOLLOW-UP TO THE 20TH CONVERSATION IN
3 REGARDS TO MULTIPLE THINGS THAT WE COULD SUBMIT AND WHY
4 SHOULD WE SUBMIT THEM AND HOW WE SHOULD RESUBMIT THEM.
5 ALSO, THERE WERE QUESTIONS THERE THAT I ASKED HIM SHOULD
6 I ANSWER, SHOULD I NOT ANSWER? AND HE SAID ANSWER
7 WHATEVER YOU CAN. WHATEVER YOU CAN'T, LEAVE BLANK.

8 Q. NOW, ON JULY 27TH THERE WAS A PETITION FOR
9 ATTORNEYS' FEES FILED BY MR. REO ON A SECOND MOTION FOR
10 SANCTIONS. WERE YOU MADE AWARE OF THIS?

11 A. NO, I WAS NOT.

12 Q. I SEE YOU SPOKE TO MR. THOMAS SEVERAL TIMES
13 BETWEEN THE FILING OF THE PETITION FOR ATTORNEYS' FEES
14 AND THE SECOND MOTION FOR SANCTIONS BEGINNING ON
15 JULY 30TH, LOOKS LIKE ONE, TWO, THREE, FOUR, FIVE, SIX,
16 SEVEN, EIGHT, NINE AND TEN, 12 PHONE CALLS DURING THAT
17 SPACE OF TIME BEFORE THE ORDER CAME DOWN GRANTING THE
18 ATTORNEYS' FEES. DID HE EVER RAISE THAT ISSUE WITH YOU?

19 A. NO, HE DID NOT.

20 Q. ON SEPTEMBER 4TH, A THIRD MOTION FOR SANCTIONS
21 WAS FILED BY MR. REO. ON SEPTEMBER 7TH AN ORDER WAS
22 SCHEDULING THE SANCTIONS HEARING. I SEE YOU SPOKE TO
23 MR. THOMAS ON SEPTEMBER 9TH. DO YOU REMEMBER WHAT THAT
24 CONVERSATION WAS ABOUT?

25 A. I BELIEVE THAT CONVERSATION WAS ASKING

1 MR. THOMAS THAT -- WHEN HE DOES HAVE THAT SANCTION
2 HEARING BECAUSE WE ACTUALLY SAW ONLINE -- WHEN WE
3 GOOGLED THE COURT CASE, WE SAW A DOCKET THAT THERE IS
4 SOMETHING HAPPENING THAT DAY. WE ASKED TO BE PART OF
5 THAT CONVERSATION. MR. THOMAS SAID THAT IS NOT AN
6 ISSUE, I WILL GIVE YOU THE ZOOM LINK ONCE I HAVE IT, AND
7 THAT NEVER HAPPENED.

8 Q. YOU SPOKE TO MR. THOMAS SEVERAL MORE TIMES
9 COMING UP TO SEPTEMBER 22ND, AND THERE WAS AN ORDER
10 SETTING A SEPTEMBER 25TH DEADLINE FOR PRODUCING
11 DOCUMENTS. DID HE -- WHERE WAS HE GOING IN SEPTEMBER?
12 WHAT WAS HE SAYING IN SEPTEMBER?

13 A. THE SAME THING THAT HE WAS SAYING BEFORE, YOU
14 GUYS GIVE WHATEVER YOU GAVE. I'M PUTTING IN MOTIONS FOR
15 THIS, MOTIONS FOR THAT. AND I SAID OKAY, DO YOU NEED
16 ANYTHING ELSE FROM US? NO, WE'RE OKAY. ONCE AGAIN, THE
17 JUDGE IS AGAINST ME. IT IS NOTHING TO DO WITH YOU GUYS.
18 WE ARE GOING TO RIGHT THE SHIP. DON'T WORRY.

19 Q. A FURTHER MOTION FOR CONTEMPT WAS FILED ON
20 SEPTEMBER 25TH WHEN DOCUMENTS WERE NOT PRODUCED. AND ON
21 SEPTEMBER 28TH YOU RECEIVED A CALL FROM MR. THOMAS. DO
22 YOU REMEMBER WHAT THAT WAS ABOUT?

23 A. IF I REMEMBER CORRECTLY, THAT CALL WAS
24 MR. THOMAS STATING THAT THE HEARING IS GOING TO BE MOVED
25 TO OCTOBER 2ND, THAT MR. REO HAD A FISHING TRIP, I

1 BELIEVE, AND THAT HE WILL LET ME KNOW WHEN IT IS AND HE
2 WILL SEND ME A ZOOM LINK AGAIN. I NEVER RECEIVED THAT
3 ZOOM LINK.

4 ALSO ON THE 2ND WHEN I DID SPEAK TO JOSH,
5 HE SAID, OH, I THOUGHT YOU WERE ON THAT CALL. I SAID,
6 NO, JOSH, I WAS NOT. OH, I COULD HAVE SWORN YOU WERE.
7 AND THAT WAS THE END OF THAT CONVERSATION.

8 Q. HOW DID YOU BECOME AWARE THAT THERE WAS AN ORDER
9 ON OCTOBER 2ND PERTAINING TO ISSUING SANCTIONS IN THE
10 CASE?

11 A. ACTUALLY, I HEARD THAT FROM YOU BECAUSE WHEN I
12 CALLED YOU TO SAY, HEY, I JUST SPOKE TO JOSH, HE COULD
13 HAVE SWORN I WAS ON THE CALL.

14 HE GOES: DID JOSH EVEN EXPLAIN TO YOU
15 WHAT THE CALL WAS ABOUT? I SAID, NO. HE SAID: WELL,
16 YOU GUYS ARE ON THE HOOK FOR ANOTHER 7,000 AND CHANGE.
17 AND THAT IS WHEN I GOT LIVID BECAUSE WE KNEW NOTHING
18 ABOUT ANYTHING THAT IS GOING ON. AND EVEN AFTER
19 EVERYTHING THAT HAPPENED, JOSH WAS STILL HOLDING
20 INFORMATION BACK FROM US AND ASKING ME TO PAY HIM MORE
21 AND MORE MONEY.

22 Q. NOW YOU RETAINED ME WHEN?

23 A. IF I'M NOT MISTAKEN, IT WAS SOMETIME AT THE END
24 OF SEPTEMBER.

25 Q. AND AT THE TIME YOU RETAINED ME, WHAT WAS THE

1 STATUS OF THE APPEAL?

2 A. THE APPEAL I BELIEVE, WAS STILL ONGOING, BUT
3 AFTER EVERYTHING THAT HAD HAPPENED WITH THE PHONE CALL
4 THAT WE WERE SUPPOSED TO BE ON THAT WE MISSED -- WITH
5 EVERYTHING THAT HAPPENED, EMIL AND I SAT DOWN. WE
6 DISCUSSED IT AND WE DECIDED TO FIRE MR. THOMAS AND
7 PURSUE MR. THOMAS FOR MALPRACTICE.

8 Q. NOW, YOU HAD ME PREPARE A LETTER IN THAT REGARD,
9 DID YOU NOT?

10 A. YES. YOU TOLD ME THAT YOU SPOKE TO MR. THOMAS
11 ON THE PHONE. MR. THOMAS SENT ME TWO E-MAILS. YOU GOT
12 ANOTHER ATTORNEY. I DID NOT RESPOND. YOU THEN SAID
13 THAT MR. THOMAS TOLD YOU THAT HE HAS MALPRACTICE
14 INSURANCE. IF YOU SEND HIM A LETTER, HE WILL BE MORE
15 THAN HAPPY TO DISCLOSE WHO IT IS. I REMEMBER YOU
16 SENDING THE LETTER BECAUSE YOU SENT ME A COPY AS WELL,
17 AND THAT WAS THE LAST WE HEARD FROM MR. THOMAS.

18 Q. YOU ASKED MR. THOMAS TO WITHDRAW THE APPEAL.
19 WHY DID YOU WITHDRAW THE APPEAL?

20 A. BECAUSE WHAT HAPPENED ON OCTOBER 2ND WAS THE
21 STRAW THAT BROKE THE CAMEL'S BACK. AND AFTER YOU SENT
22 HIM THE REQUEST FOR HIS MALPRACTICE INSURANCE AND HE
23 NEVER GOT BACK TO YOU, WE DECIDED THAT MR. THOMAS HAS TO
24 LOSE HIS JOB, YOU COULD SAY. WE DECIDED TO FIRE HIM.

25 Q. WERE YOU AWARE OF THE 76-PAGE TRANSCRIPT IN THE

1 JACOVETTI CASE WHICH MR. THOMAS WAS SUPPOSED TO PROVIDE
2 TO YOU?

3 A. NO, I WAS NOT AWARE OF THAT OR ACTUALLY WAS
4 AWARE OF IT AFTER YOU SENT IT TO ME, ALONG WITH A
5 WRITTEN DOCUMENT THAT THE JUDGE PRESENTED AS WELL, THAT
6 JOSH SHOULD HAVE SENT TO US BEFORE WE SIGNED THAT
7 CERTIFICATION. BUT FROM THE WAY THAT JOSH MADE IT SEEM,
8 WAS THAT EVERYTHING WAS GREAT AND THAT THE JUDGE IS JUST
9 MAD AT HIM, AND IT'S OKAY. AND WE COULD JUST MOVE
10 FORWARD.

11 Q. WOULD YOU HAVE CONTINUED WITH MR. THOMAS'S
12 REPRESENTATION BACK IN APRIL IF YOU HAD SEEN THOSE
13 DOCUMENTS?

14 A. NO, I WOULD NOT.

15 MR. ARTOM-GINZBURG: I HAVE NOTHING
16 FURTHER, YOUR HONOR.

17 THE COURT: MR. REO.

18 CROSS-EXAMINATION

19 BY MR. REO:

20 Q. DID YOU AUTHORIZE THE FILING OF JACOVETTI LAW V
21 SHELTON?

22 A. NO, I DID NOT.

23 Q. WHEN DID YOU FIRST LEARN OF THE ACTION JACOVETTI
24 LAW V SHELTON?

25 A. I FIRST LEARNED ABOUT IT WHEN MR. JACOVETTI GAVE

1 ME A CALL AND SAID THAT JOSH PUT YOU GUYS INTO THIS
2 LAWSUIT WHEN HE SHOULD NOT HAVE, AND THAT THERE IS
3 SOMETHING CALLED RES JUDICATA AND THAT I SHOULD NOT HAVE
4 BEEN IN THERE FROM THE GET-GO, AND THAT HE IS GOING TO
5 REQUEST FOR ME TO GET TAKEN OUT. THAT IS WHEN I LEARNED
6 ABOUT IT. TO THIS DAY I STILL HAVE NOT SEEN A COPY OF
7 THAT LAWSUIT.

8 Q. DO YOU REMEMBER APPROXIMATELY WHEN THAT
9 CONVERSATION TOOK PLACE?

10 A. TO BE HONEST WITH YOU, I DO NOT.

11 Q. WOULD THAT BE SOMETIME IN THE SPRING OR SUMMER
12 OF 2020 OR EARLIER, OR YOU JUST DON'T REMEMBER AT ALL?

13 A. I DON'T RECALL. I HAVE A LOT OF CONVERSATIONS
14 WITH BOB, TO BE HONEST WITH YOU. I DON'T KNOW IF THAT
15 WOULD BE ONE OF THEM.

16 Q. SURE. WHEN DID JOSHUA THOMAS FIRST INFORM YOU
17 THAT A JUDGMENT HAD BEEN ENTERED AGAINST YOU IN THE
18 CASE, SHELTON V FCS?

19 A. WHEN HE ASKED US TO PRODUCE THE INFORMATION IN
20 JULY.

21 Q. DID MR. THOMAS EVER INFORM YOU THAT THE JUDGMENT
22 ENTAILED \$54,000?

23 A. WHAT HE TOLD US WAS THAT IT ENTAILED 27,000, AND
24 LATER FOUND OUT FROM HIM, HE GOES, OH, YOU PERSONALLY
25 FOR 27 AND NOW THE BUSINESS FOR 27.

1 Q. BETWEEN MARCH 27, 2020 AND MAY 4, 2020 DID
2 MR. THOMAS EVER PROVIDE YOU WITH THE 76 PAGES OF
3 TRANSCRIPTS FROM THE HEARING WHERE HE WAS SANCTIONED, OR
4 DID HE REFERENCE THE TRANSCRIPTS, DISCUSS THEM OR
5 DESCRIBE THEM IN ANY MANNER?

6 A. NO, HE DID NOT. THE ONLY TIME THAT I LEARNED
7 ABOUT THOSE TRANSCRIPTS AND THE WRITTEN NOTICE THAT YOUR
8 HONOR ASKED MY PARTNER ABOUT IS WHEN MR. GINZBURG
9 PROVIDED THEM TO US AND I BECAME VERY LIVID AFTER I READ
10 THOSE TRANSCRIPTS. ME AND MR. GINZBURG HAD ABOUT A
11 20-MINUTE CONVERSATION WHERE HE WAS TRYING TO CALM ME
12 DOWN.

13 Q. SO JOSHUA THOMAS NEVER GAVE YOU THE TRANSCRIPTS.
14 YOU GOT THEM FROM MR. ARTOM-GINZBURG.

15 A. THAT'S CORRECT, MR. REO.

16 Q. THAT WOULD BE WITHIN THE LAST SIX TO EIGHT
17 WEEKS.

18 A. YES, SIR.

19 Q. DID MR. THOMAS EXPLAIN WHAT POST-JUDGMENT
20 DISCOVERY MEANT AND WHAT IT ENTAILED?

21 A. NO. WHAT HE DID TELL US WAS THAT GIVE US THE
22 DOCUMENTATION, WHETHER IT BE ON THE BUSINESS OR ANYTHING
23 ELSE. THAT IS TO KEEP REO AND SHELTON AT BAY.

24 HE GOES: GIVE ME WHATEVER YOU CAN, AND I
25 WILL SUBMIT IT. WE ALSO ASKED HIM TO REDACT ANY AND ALL

1 INFORMATION ON THERE THAT SHOULD NOT BE THERE. EMIL
2 ACTUALLY SENT HIM AN E-MAIL AND HE NEVER DID THAT AS
3 WELL.

4 Q. DO YOU HAVE ANY SPECIFIC LEGAL EDUCATION,
5 SPECIFIC EXPERIENCE IN LAW OR A HISTORY OF INVOLVEMENT
6 IN LITIGATION SUCH THAT PERHAPS YOU WOULD BE A LEGALLY
7 SOPHISTICATED INDIVIDUAL, OR WOULD YOU CONSIDER YOURSELF
8 KIND OF A STREET LAYMAN?

9 A. I'M A CIVILIAN TYPE OF GUY.

10 Q. SO IT'S FAIR TO SAY THAT YOU TRUSTED MR. THOMAS
11 TO GIVE YOU REGULAR AND TIMELY UPDATES ABOUT THE
12 PROCEEDINGS OF THE CASE.

13 A. YES, SIR.

14 Q. AND DO YOU BELIEVE HE GAVE YOU REGULAR AND
15 TIMELY UPDATES ABOUT THE PROCEEDINGS OF THE CASE?

16 A. NO, HE DID NOT.

17 Q. ALL RIGHT. AND HAD YOU KNOWN THAT HE HAD BEEN
18 SANCTIONED AND WHAT WAS GOING ON IN JACOVETTI LAW V
19 SHELTON, WOULD YOU HAVE CONTINUED TO BE REPRESENTED BY
20 HIM IN SHELTON V FCS?

21 A. NO, WE WOULD NOT.

22 Q. DO YOU KNOW IF JOSHUA THOMAS HAS MALPRACTICE
23 INSURANCE?

24 A. HE TOLD MR. GINZBURG THAT HE HAS INSURANCE. TO
25 SEND HIM A LETTER, HE WILL PROVIDE HIM THE INSURANCE

1 RIGHT AWAY. HE NEVER ANSWERED THEREAFTER.

2 Q. SO YOU DON'T KNOW IF HE ACTUALLY DOES OR DOES
3 NOT.

4 A. I DO NOT KNOW, NO.

5 MR. REO: NOTHING FURTHER AT THIS TIME.

6 THE COURT: MR. SILVESTRO, I WILL LET YOU
7 GO, IF YOU HAVE ANYTHING, AND THEN I HAVE SOME
8 QUESTIONS. NOT A LOT.

9 CROSS EXAMINATION

10 BY MR. SILVESTRO:

11 Q. MR. SHARGEL, YOU INDICATED THAT YOU FOUND OUT
12 THAT YOU WERE A PARTY TO THE JACOVETTI ACTION AS A
13 RESULT OF A CONVERSATION WITH MR. JACOVETTI?

14 A. YES.

15 Q. ON HOW MANY OCCASIONS DID YOU DISCUSS YOU BEING
16 A PARTY IN THAT MATTER WITH MR. JACOVETTI?

17 A. ONLY AFTER IT HAD HAPPENED. I BELIEVE MAYBE
18 ONCE OR TWICE AFTER THAT.

19 Q. AND WERE YOU MADE AWARE BY MR. JACOVETTI OR
20 ANYONE ELSE THAT AT SOME POINT MR. THOMAS HAD FILED AN
21 AMENDED COMPLAINT IN WHICH YOU WERE REMOVED FROM THAT
22 ACTION?

23 A. MR. JACOVETTI TOLD US THAT WE WERE BEING SWIFTLY
24 REMOVED, THAT HE CONTACTED MR. THOMAS. LIKE I SAID
25 PREVIOUSLY, TO THIS DAY I'VE NEVER SEEN THE ORIGINAL,

1 NOR THE AMENDED COMPLAINT.

2 Q. AT SOME POINT DID MR. JACOVETTI CONFIRM THAT YOU
3 HAD IN FACT BEEN REMOVED AS A PARTY?

4 A. YES, I BELIEVE SO.

5 Q. DID YOU DO ANY INDEPENDENT INVESTIGATION LIKE
6 YOU HAD SUGGESTED BEFORE? DID YOU LOOK AT THE DOCKET OR
7 DID YOU HAVE A CONVERSATION WITH MR. THOMAS AS TO WHY
8 YOU WERE A PARTY?

9 A. NO, WE DID NOT. FROM WHAT I UNDERSTOOD, IT WAS
10 A MISTAKE. FROM WHAT I UNDERSTOOD IT WAS A MISTAKE AND
11 THAT MISTAKE WAS GOING TO GET CORRECTED.

12 Q. AT SOME POINT YOU WERE AWARE THAT IT WAS
13 CORRECTED?

14 A. YES, SIR.

15 Q. DO YOU HAVE A COPY OF THE CERTIFICATION IN FRONT
16 OF YOU?

17 A. IF YOU BEAR WITH ME A MOMENT, I CAN PULL IT UP.
18 GIVE ME ONE MOMENT. IT WAS ACTUALLY ON MY PHONE THAT
19 MR. YASHAYEV WAS LOOKING AT. IF YOU GIVE ME A MOMENT,
20 MR. YASHAYEV WILL PULL IT UP ON HIS PHONE SO I CAN TAKE
21 A LOOK AT IT.

22 Q. YOU MAY NOT EVEN HAVE TO LOOK AT IT.
23 SPECIFICALLY IN PARAGRAPH 1 IT REFERS TO YOU REVIEWING
24 THINGS BEFORE YOU AGREE TO CONTINUE TO EMPLOY
25 MR. THOMAS. ARE YOU FAMILIAR WITH THAT VERBIAGE?

1 A. YES.

2 Q. DID YOU REVIEW ANYTHING BEFORE YOU PUT YOUR
3 SIGNATURE ON THE CERTIFICATION?

4 A. NO. THE ONLY THING THAT WE HEARD IS WHAT JOSH
5 TOLD US VERBALLY, THAT, LIKE I SAID PRIOR, THE JUDGE WAS
6 MAD AT HIM, EVERYTHING IS OKAY. FROM WHAT I REMEMBER
7 NOW, HE ALSO SAID THAT HE WANTS TO BRING SOMEBODY IN AS
8 THE FACE OF THE LAWSUIT AND THAT HE IS GOING TO BE IN
9 THE BACK DOING ALL THE WORK.

10 Q. AND DID YOU PURSUE HIRING A NEW LAWYER AT THAT
11 POINT?

12 A. NO. BECAUSE WE -- FROM WHAT MR. THOMAS TOLD US,
13 EVERYTHING IS OKAY, AND THAT THE JUDGE IS MAD AT HIM.
14 AND IT HAS NO MERIT ON OUR CASE WHATSOEVER, THAT IT HAS
15 NO WEIGHT ON IT. AND TO BE HONEST WITH YOU, I DID NOT
16 EVEN KNOW THAT I WAS SIGNING A CERTIFICATION FOR A CASE
17 THAT I SHOULD NOT HAVE BEEN IN FROM THE GET-GO, AND
18 NEITHER SHOULD HAVE BEEN MY PARTNER.

19 Q. AT THE TIME YOU SIGNED THE CERTIFICATION, WERE
20 YOU AWARE THAT YOU WERE A PARTY?

21 A. NO, I WAS NOT.

22 MR. SILVESTRO: NOTHING FURTHER, YOUR
23 HONOR.

24 THE COURT: I JUST HAVE A COUPLE
25 FOLLOW-UPS AND THEN I AM GOING TO LET MR. THOMAS GO.

1 THE WITNESS: CAN I HAVE A FIVE-MINUTE
2 BATHROOM BREAK. I APOLOGIZE. I HAD A HEADACHE THIS
3 MORNING. I'M DRINKING A LOT OF WATER. I HAVE TO RUN TO
4 THE TOILET, IF YOU DON'T MIND, PLEASE.

5 THE COURT: TAKE A FIVE MINUTE RECESS.

6 THE WITNESS: THANK YOU SO MUCH.

7 (BREAK TAKEN.)

8 THE COURT: ARE WE READY TO GO BACK ON
9 THE RECORD? WE ARE MISSING MR. REO. THERE HE IS. ALL
10 RIGHT.

11 I JUST HAVE A FEW QUESTIONS FOR YOU,
12 MR. SHARGEL.

13 BY THE COURT:

14 Q. YOU SAID THAT YOU FOUND OUT THERE WAS A JUDGMENT
15 AGAINST YOU WHEN YOU WERE TRYING TO BUY A CAR, AND I
16 THINK YOU PULLED YOUR CREDIT REPORT.

17 WHEN WAS THAT?

18 A. THIS WAS IN EARLY AUGUST BECAUSE FROM WHAT WE
19 UNDERSTOOD, IT WAS NOT EVEN ON OUR CREDIT REPORT YET.
20 AND THEN WHEN I WENT TO GO GET A CAR, ONE OF THE BUREAUS
21 HAD IT ON THERE. ONE CALLED CLEAR SCORE. I APOLOGIZE.

22 Q. SO BY THAT POINT WHEN YOU WERE DOING THAT, YOU
23 KNEW THAT THERE WAS DISCOVERY THAT WAS BEING ISSUED IN
24 AID OF EXECUTION OF THE JUDGMENT, RIGHT, WHERE THEY ARE
25 ASKING FOR ALL YOUR BANK ACCOUNTS AND THINGS LIKE THAT?

1 A. YEAH. WE PROVIDED THOSE PRIOR TO MR. THOMAS.

2 Q. BUT YOU ARE SAYING -- YOUR TESTIMONY IS THAT YOU
3 KNEW YOU WERE BEING ASKED FOR THAT INFORMATION, BUT YOU
4 DID NOT KNOW THAT IT WAS TO AID THE OTHER SIDE IN
5 EXECUTING ON A JUDGMENT.

6 A. YES, SIR.

7 Q. ALL RIGHT.

8 AND MAYBE YOU SAID THIS, AND I MISSED IT.
9 BUT WHEN DID YOU FIND OUT ABOUT THE REQUESTS FOR
10 INFORMATION IN AID OF EXECUTION, IN OTHER WORDS, THE
11 DISCOVERY THAT WAS ASKING FOR YOUR BANK ACCOUNT
12 INFORMATION?

13 A. ON JULY THE 20TH.

14 Q. THAT WAS THE FIRST TIME?

15 A. YES, SIR.

16 Q. THE CERTIFICATION THAT YOU SIGNED THAT
17 MR. SILVESTRO ASKED YOU ABOUT, DID YOU TALK TO
18 MR. JACOVETTI AT ALL ABOUT IT?

19 A. WHAT CERTIFICATION, YOUR HONOR?

20 Q. THE ONE WHERE YOU SAID YOU HAD REVIEWED AND
21 DISCUSSED ALL THE PROCEEDINGS IN THE CASE, THAT YOU THEN
22 SUBMITTED TO ME -- OR THAT MR. THOMAS SUBMITTED TO ME.

23 A. THAT IS MARCH -- APRIL 23RD, I BELIEVE.

24 Q. YES.

25 DID YOU TALK -- I'M JUST ASKING IF YOU

1 DISCUSSED THAT AT ALL WITH MR. JACOVETTI.

2 A. MR. JACOVETTI WAS ACTUALLY ON THE PHONE CALL
3 WITH MR. THOMAS AND I WHEN MR. THOMAS WAS STATING THAT
4 THE JUDGE IS JUST MAD AT ME, IT HAS NOTHING TO DO WITH
5 YOU GUYS. I'M GOING TO BRING SOMEBODY ELSE IN AS THE
6 FACE. I'M GOING TO DO ALL THE WORK IN THE BACK END. HE
7 NEVER TOLD US IT'S FOR CERTIFICATION FOR JACOVETTI
8 VERSUS SHELTON. I UNDERSTOOD THAT IT'S A CERTIFICATION
9 FOR OUR CASE. I NEVER EVEN KNEW THAT HE HAD TO PRESENT
10 THIS WITH 76 PAGES WORTH OF DOCUMENTATION.

11 Q. SO THERE WAS A CONVERSATION WITH YOU, MR. THOMAS
12 AND MR. JACOVETTI. WERE THERE -- WERE THERE ANY OTHER
13 CONVERSATIONS BETWEEN YOU AND MR. JACOVETTI WITHOUT
14 MR. THOMAS ABOUT IT?

15 A. MR. JACOVETTI CALLED ME AND SAID GET THAT SIGNED
16 IN A TIMELY MANNER. I SAID: NOT A PROBLEM.

17 Q. AND THAT WAS IT?

18 A. THAT WAS IT.

19 Q. OKAY.

20 THERE WAS A SANCTIONS HEARING ON OCTOBER
21 2ND THAT YOU SAID YOU HAD WANTED TO ATTEND.

22 A. YES, SIR.

23 Q. AND I GATHER THAT YOU WERE NOT ABLE TO ATTEND.
24 YOU DID NOT GET THE ZOOM LINK FROM MR. THOMAS SO YOU
25 MISSED IT, RIGHT?

1 A. YES. MR. THOMAS ALSO TOLD ME THAT I COULD HAVE
2 SWORN I WAS ON THAT CALL, WHEN I WAS NOT.

3 Q. DID YOU AT SOME POINT CALL EITHER MY CHAMBERS OR
4 THE CLERK'S OFFICE TO FIND OUT ABOUT THE STATUS OF THAT
5 HEARING?

6 A. I WILL EXPLAIN TO YOU WHAT HAPPENED. I CALLED
7 -- I SPOKE TO JOSH AND I ASKED HIM IF I COULD BE PRIVY
8 TO THE HEARING. HE SAID THAT I BELIEVE THAT THERE
9 SHOULD NOT BE A REASON WHY YOU SHOULD NOT BE. I SAID
10 OKAY. HE SAID IT'S SUPPOSED TO BE I BELIEVE ON THE 28TH
11 OF SEPTEMBER. THAT WAS THE FIRST DATE. HE THEN CALLED
12 ME AND LET ME KNOW THAT IT WAS BEING RESCHEDULED. I
13 DON'T REMEMBER THE EXACT DATE. THE FIRST ONE WAS
14 RESCHEDULED TO OCTOBER 2ND. HE THEN TOLD ME THAT I
15 BELIEVE MR. REO HAD A FISHING TRIP OR WHATEVER THE CASE
16 WAS, I WILL GIVE YOU THE LINK ONCE I HAVE IT.

17 HE CALLED ME EITHER RIGHT AFTER OR
18 SOMETIME AFTER TO TELL ME HEY, WE JUST HAD THE HEARING,
19 WHAT DID YOU THINK? I SAID I WAS NOT ON THE HEARING.
20 OH, I COULD HAVE SWORN YOU WERE. HE NEVER TOLD ME WHAT
21 HAPPENED AT THE HEARING. HE DID NOT EVEN GIVE ME A
22 CHANCE TO EVEN ASK THAT. HE SAID I WILL CALL YOU LATER
23 AND NEVER CALLED ME BACK.

24 MR. GINZBURG THEN TOLD ME THAT SAME DAY,
25 HEY, YOU GUYS ARE ON THE HOOK FOR ANOTHER \$7,000.

1 MR. THOMAS LOST THAT CASE.

2 Q. SO THERE WAS NO POINT WHERE YOU CALLED ANYONE
3 WITH THE COURT DIRECTLY, EITHER MY CHAMBERS OR THE
4 CLERK'S OFFICE OR SOMETHING LIKE THAT?

5 A. NOT THAT I RECALL, SIR, NO.

6 THE COURT: OKAY. ALL RIGHT. THOSE ARE
7 ALL MY QUESTIONS.

8 MR. THOMAS, YOUR WITNESS.

9 MR. THOMAS: THANK YOU, YOUR HONOR. GIVE
10 ME ONE MOMENT. JUST TRYING TO RECONSTRUCT MY NOTES.
11 GIVE ME ONE SECOND.

12 CROSS EXAMINATION

13 BY MR. THOMAS:

14 Q. MR. SHARGEL, HOW ARE YOU?

15 A. I'M GOOD. HOW ARE YOU?

16 BY MR. THOMAS:

17 Q. IN REGARDS TO -- SORRY. I HAD TO REDO MY NOTES
18 SO IF I'M A LITTLE SCATTERED, I APOLOGIZE.

19 A. NO WORRIES.

20 Q. IN REGARDS TO THE SPECIFIC COMMUNICATIONS THAT
21 YOU COMPILED WITH -- IN REGARDS TO, I GUESS, PRIOR TO
22 THIS HEARING, THOSE COMMUNICATIONS, HOW DID YOU COMPILE
23 THAT LIST?

24 A. I PUT EVERY ONE OF MY E-MAIL COMMUNICATION WITH
25 YOU. I PULLED ALL MY PHONE RECORDS FROM VERIZON

1 WIRELESS. I PULLED ALL OF MY TEXT MESSAGES OFF OF MY
2 PHONE. I LOGGED INTO MY ICLOUD, AND I PULLED EVERY
3 HISTORY OF EVERY CONVERSATION THAT I HAVE HAD WITH YOU.

4 Q. VERY GOOD. DID YOU INCLUDE ALL OF THOSE E-MAILS
5 IN THAT LIST THAT WAS SUBMITTED TO THE COURT?

6 A. THE ONLY E-MAIL THAT I DID NOT SUBMIT WAS THE
7 E-MAIL FROM 2018 BECAUSE I UNDERSTOOD THAT THAT E-MAIL
8 WAS NOT RELEVANT BECAUSE THAT PRECEDED THE TIME THAT WE
9 WERE SPEAKING OF.

10 Q. SO THE COMMUNICATIONS THAT HE SUBMITTED, THE
11 SUMMARY OF COMMUNICATIONS THAT WERE SUBMITTED BY HIM,
12 DID YOU REVIEW THOSE BEFORE THEY WERE ACTUALLY SUBMITTED
13 TO THE COURT?

14 A. YES, SIR, I DID.

15 Q. SO YOU ARE AWARE THAT THE SUMMARY OF
16 COMMUNICATIONS STARTS APRIL 3RD, 2019.

17 ARE YOU SAYING THERE ARE NO
18 COMMUNICATIONS PRIOR TO APRIL 23RD, 2019 WITH ME?

19 A. THERE WAS. THERE WAS COMMUNICATION WITH YOU
20 WHEN WE HIRED YOU FOR THE CASE. THERE WAS COMMUNICATION
21 WHEN I SENT YOU EVIDENCE THAT YOU SHOULD USE IN THE
22 CASE. THERE WAS MULTIPLE E-MAILS WITH EVIDENCE, BUT
23 MR. GINZBURG TOLD ME THAT THAT IS IRRELEVANT TO WHAT WE
24 ARE DOING HERE TODAY.

25 Q. SO JUST SO WE ARE CLEAR, THIS LIST OF

1 COMMUNICATIONS, THE SUMMARY OF TELEPHONE RECORDS, THIS
2 IS NOT THE FULL LIST OF E-MAILS THAT YOU AND I HAVE
3 COMMUNICATED WITH, POTENTIALLY NOT EVEN THE FULL LIST OF
4 PHONE CALLS WHICH WE WILL GET INTO IN A MINUTE. SO THIS
5 DOES NOT REFLECT ALL COMMUNICATIONS BETWEEN US, IS THAT
6 ACCURATE?

7 A. THAT IS ACCURATE.

8 Q. DOES IT ALSO INCLUDE ALL THE CALLS WHERE IT WAS
9 INITIATED BY MR. JACOVETTI WHERE HE CALLED YOU AND I
10 BOTH? DOES IT INCLUDE THOSE CALLS AS WELL?

11 A. YES, IT DOES.

12 Q. IT DOES. SO YOU ACTUALLY HAVE --

13 A. I BELIEVE IT DOES.

14 Q. DID YOU SPECIFICALLY INCLUDE ALL OF THE PHONE
15 CALLS FROM MR. JACOVETTI WHERE YOU AND I WERE BOTH ON
16 THE PHONE TOGETHER?

17 A. MOST OF THE TIME WHEN YOU AND I SPOKE, JOSH, OR
18 ACTUALLY 99 PERCENT OF THE TIMES, I INITIATED THE CALLS
19 WITH YOU OR YOU INITIATED A CALL WITH ME, AND THEN I
20 WOULD ASK TO GET MR. JACOVETTI ON THE LINE, AND THEN
21 EITHER I WOULD THREE WAY HIM IN OR YOU WOULD.

22 Q. I WILL ASK THAT QUESTION ONE MORE TIME, SINCE
23 THAT IS NOT REALLY AN ANSWER. DOES THAT INCLUDE THE
24 CALLS WHEN MR. JACOVETTI INITIATED THE CALL AND THEN YOU
25 AND WERE I WERE BOTH ON THE PHONE WITH HIM?

1 A. I DON'T REMEMBER MR. JACOVETTI INITIATING ANY
2 CALLS BETWEEN YOU AND I.

3 Q. SO THE ANSWER TO THAT QUESTION IS NO, IT DOES
4 NOT INCLUDE ANY CALLS, IS THAT CORRECT?

5 A. THE ANSWER IS NOT NO. IT SAYS THAT I DO NOT
6 RECALL ANY CONVERSATION THAT MR. JACOVETTI INITIATED
7 BETWEEN YOU AND I.

8 Q. OKAY. THERE'S A MOTION TO RECONSIDER. AGAIN, I
9 APOLOGIZE. I DON'T HAVE THE EXHIBITS SO I'M JUST GOING
10 TO REFER TO THE PAGE NUMBER.

11 MR. THOMAS: I APOLOGIZE, YOUR HONOR. I
12 BELIEVE MOST OF THESE ARE ALREADY LISTED AS EXHIBITS.

13 THE WITNESS: DO YOU GUYS MIND IF I HAVE
14 A CHANCE TO LOOK AT THEM AS WELL?

15 BY MR. THOMAS:

16 Q. I'M SAYING WE WILL REFER TO THE PAGE NUMBERS SO
17 THAT WE CAN REVIEW THEM.

18 IT'S PAGE 43 IS THE FIRST ONE.

19 A. BEAR WITH ME A MOMENT. LET ME GET IT HERE.

20 THE COURT: FOR OUR RECORD, THAT IS
21 EXHIBIT 7.

22 GO AHEAD.

23 MR. THOMAS: THANK YOU. I WILL FILL IN
24 THE EXHIBITS AS WE GO. I APOLOGIZE AGAIN.

25 THE WITNESS: IS THAT THE ONE FROM

1 MONDAY, JANUARY 27TH?

2 BY MR. THOMAS:

3 Q. CORRECT.

4 A. OKAY.

5 Q. THE E-MAIL THAT SAYS THAT, IS THAT YOUR E-MAIL?

6 A. YES, IT IS.

7 Q. DO YOU REMEMBER RECEIVING THIS MOTION TO
8 RECONSIDER?

9 A. I REMEMBER RECEIVING A MOTION TO RECONSIDER, BUT
10 FROM WHAT I BELIEVE THIS WAS A MOTION TO RECONSIDER A
11 MOTION THAT WAS FILED. NOTHING TO DO WITH A JUDGMENT ON
12 OUR -- ON US.

13 Q. WHAT DID YOU THINK THE MOTION TO RECONSIDER WAS
14 FOR?

15 A. FOR SOME KIND OF MOTION THAT YOU PUT IN AS WELL,
16 AND THE JUDGE STRUCK IT DOWN. YOU SAID THAT I HAVE TO
17 PUT IN A MOTION TO RECONSIDER, AND THAT IS WHAT I
18 THOUGHT IT WAS BECAUSE OF.

19 Q. AND WE HAD A PHONE CALL ON THIS MATTER PRIOR TO
20 THE MOTION TO RECONSIDER BEING SUBMITTED.

21 A. IF YOU BEAR WITH ME ONE SECOND, I WILL LOOK
22 THROUGH MY RECORDS.

23 Q. DO YOU REMEMBER OFF THE TOP OF YOUR HEAD IF
24 THERE WAS A PHONE CALL BEFORE THAT WAS SUBMITTED?

25 A. NO. I DON'T REMEMBER OFF THE TOP OF MY HEAD,

1 SIR, NO.

2 Q. SO IT APPEARS, BASED ON YOUR RECORDS -- NOW YOU
3 CAN LOOK, THAT THERE WAS PHONE CALLS ON JANUARY 2ND, A
4 TEXT JANUARY 2ND, A TEXT JANUARY 16TH AND A CALL JANUARY
5 21ST.

6 A. THERE WAS A ONE MINUTE PHONE CALL ON JANUARY
7 2ND, WHICH YOU DID NOT ANSWER. I THEN SENT YOU A TEXT
8 MESSAGE ON JANUARY 2ND ASKING YOU FOR A CALL BACK. YOU
9 CALLED ME BACK. WE SPOKE FOR ONE MINUTE, AND THEN WE
10 SPOKE AGAIN ON THE 13TH FOR A MINUTE, AND ON THE 16TH
11 FOR A MINUTE AND THEN -- I'M SORRY.

12 I CALLED YOU ON -- ON 8/23 I GAVE YOU A
13 CALL. AND ON JANUARY 16TH, I CALLED YOU. JANUARY 13TH
14 I CALLED YOU. WHEN YOU WERE NOT RESPONDING TO ME, I
15 THEN SENT YOU A TEXT MESSAGE REQUESTING A CALL BACK.

16 Q. OKAY.

17 A. YOU AND I FINALLY SPOKE, I BELIEVE, ON JANUARY
18 21ST, IF I'M NOT MISTAKEN -- OR I ACTUALLY PLACED TWO
19 CALLS OF A MINUTE EACH, AND YOU DID NOT ANSWER, AS WELL.

20 Q. AGAIN, THIS DOES NOT INCLUDE ANY CALLS WHERE
21 MR. JACOVETTI CALLED UP BOTH OF US AHEAD OF TIME AND
22 THEN THERE IS THE THREE OF US ON THE PHONE?

23 A. I BELIEVE IT DOES NOT, NO. BUT I DON'T -- LIKE
24 I SAID BEFORE, I DON'T REMEMBER MR. JACOVETTI INITIATING
25 ANY PHONE CALLS. I REMEMBER ALL THE PHONE CALLS EITHER

1 BEING INITIATED BY YOU OR ME AND THEN PUTTING
2 MR. JACOVETTI IN, BECAUSE AT THAT TIME, MR. JACOVETTI
3 WAS NOT A PARTY ANYMORE TO THE LAWSUIT, AND THE ONLY
4 REASON WHY I'D WANT MR. JACOVETTI ON THE PHONE WAS
5 BECAUSE MR. JACOVETTI WAS AN ATTORNEY AND I VALUED HIS
6 OPINION ON SOME THINGS.

7 Q. AND DO YOU CONSULT WITH -- DID YOU CONSULT WITH
8 HIM FREQUENTLY ON THE CASE?

9 A. NO, I DID NOT CONSULT BECAUSE I TRUSTED YOU,
10 BECAUSE I THOUGHT THAT YOU WOULD BE FORTHCOMING AND
11 HONEST WITH US IN EVERYTHING THAT WAS GOING ON.

12 Q. DID YOU DISCUSS THE CASE -- AND IT'S NOT ON YOUR
13 LIST, BUT SIR, DID YOU DISCUSS THE CASE IN DECEMBER OF
14 2019 WITH MR. JACOVETTI AT ALL?

15 A. NO, I DID NOT.

16 Q. YOU NEVER DISCUSSED THEM IN DECEMBER. HOW ABOUT
17 NOVEMBER OF 2019?

18 A. I DON'T RECALL.

19 Q. HOW ABOUT OCTOBER OF 2019?

20 A. I SPEAK TO MR. JACOVETTI ALL THE TIME. MAYBE I
21 ASKED HIM: HEY, DID YOU HEAR FROM JOSH OR WHATEVER THE
22 CASE IS. AND THAT WOULD BE A YES OR NO ANSWER. I DON'T
23 REMEMBER DISCUSSING THE CASE WITH HIM.

24 Q. OKAY.

25 THE MOTION TO RECONSIDER, OFF THE TOP OF

1 YOUR HEAD, DO YOU KNOW WHAT THE BASIS FOR IT WAS?

2 A. I DO NOT REMEMBER.

3 Q. DO YOU REMEMBER SENDING ME -- SORRY, ONE SECOND.

4 DO YOU REMEMBER SENDING ME AN E-MAIL
5 JANUARY 30TH? I WILL REFER TO -- GIVE ME ONE SECOND, I
6 WILL TELL YOU WHAT THE NUMBER IS.

7 A. NO PROBLEM.

8 Q. GREAT. MISSED THE PAGE.

9 DO YOU REMEMBER SENDING AN E-MAIL ABOUT
10 THE RECORDINGS, THE FOUR RECORDINGS?

11 A. YES. I REMEMBER SENDING YOU RECORDINGS OF
12 MR. SHELTON TALKING ABOUT WHAT HE DOES AND HOW HE DOES
13 THINGS.

14 Q. IF I STATE TO YOU IT WAS JANUARY 30TH, THREE
15 DAYS AFTER THIS WAS FILED, WOULD YOU ACCEPT THAT? I
16 JUST CAN'T FIND THE E-MAIL.

17 A. I'M SURE IT SOUNDS ABOUT RIGHT, JOSH.

18 Q. YOU SENT IT TO ME JANUARY 30TH, AND THEN AFTER
19 THAT, I JUST DON'T HAVE THE PAGE NUMBER. I DON'T WANT
20 TO WASTE EVERYBODY'S TIME.

21 AFTER THAT THERE WAS A SET OF TRANSCRIPTS
22 WHICH WERE THEN USED AGAIN BACK ON FEBRUARY 20TH. DO
23 YOU REMEMBER RECEIVING THOSE TRANSCRIPTS?

24 A. I BELIEVE THAT MR. JACOVETTI HAD THOSE
25 TRANSCRIPTS, JUST TRANSCRIBED BY A COMPANY THAT HE USES,

1 AND THAT WE SENT THEM TO YOU. YOU SAID THIS IS GREAT,
2 AS MORE EVIDENCE AGAINST SHELTON.

3 Q. SO WE RECEIVED THEM -- I SHOULD SAY, YOU AND I
4 RECEIVED THEM, IT LOOKS LIKE FEBRUARY 20TH FROM KRISTIN
5 WILSON. IT LOOKS LIKE THEY WERE RECEIVED FEBRUARY 19TH.
6 IS THAT FAIR TO SAY?

7 A. I DON'T RECALL. I DON'T HAVE IT IN FRONT OF ME.
8 IF YOU COULD CITE THE PAGE NUMBER.

9 Q. LET ME SEE IF I HAVE A PAGE NUMBER. FOR SOMEONE
10 ELSE I ACTUALLY INCLUDED IT. WELL, LET'S JUST SAY, AT
11 SOME POINT THEY WERE TRANSCRIBED, CORRECT?

12 A. YES, THEY WERE TRANSCRIBED.

13 Q. DO YOU REMEMBER THAT WE HAD A PHONE CALL TO SAY
14 THEY NEEDED TO BE TRANSCRIBED?

15 A. YES, WE DID.

16 Q. SO OBVIOUSLY IT HAD TO BE BEFORE FEBRUARY 20TH,
17 CORRECT?

18 A. YES. AND I ALSO ASKED YOU WHY DO THEY HAVE TO
19 BE TRANSCRIBED. AND YOU SAID BECAUSE THE COURT DOES NOT
20 ACCEPT IT IN A WAVE FILE OR WHATEVER THE CASE IS. AND I
21 SAID: HOW IS THIS GOING TO HELP US IN THE CASE? YOU
22 SAID: THIS IS THE BEST EVIDENCE YOU CAN HAVE BECAUSE
23 NOW WE HAVE SHELTON ON RECORDING DOING HIS ELABORATE
24 SCHEME. I -- AT THAT TIME, ME NOR EMIL KNEW THAT THERE
25 WAS A JUDGMENT ALREADY GRANTED AGAINST US. SO WE WERE

1 FEEDING YOU MORE INFORMATION WHICH WAS GOING NOWHERE.

2 Q. WELL, WE ARE GOING TO GET TO THE FACT THAT IT IS
3 GOING NOWHERE. SO WE'LL GET TO THAT.

4 AGAIN, SO YOU UNDERSTOOD THAT THESE WOULD
5 BE FILED IN THE CASE, CORRECT?

6 A. YES.

7 Q. YOUR IDEA FOR SENDING THEM TO ME WAS BECAUSE YOU
8 THOUGHT THEY WERE IMPORTANT THAT THEY GET IN FRONT OF
9 THE JUDGE, CORRECT?

10 A. YES, BECAUSE UNDER MY ASSUMPTION, THE CASE --
11 THE COURT: MR. THOMAS, LET HIM FINISH
12 HIS ANSWER.

13 THE WITNESS: THE CASE WAS STILL OPEN.
14 THERE WERE NO PROBLEMS IN THE CASE WHATSOEVER, AND THAT
15 WE WERE JUST SUPPLYING YOU WITH MORE INFORMATION TO
16 FIGHT THE CASE AND TO BASICALLY MAKE OUR POINT EVEN
17 STRONGER. LITTLE DID WE KNOW THAT THEY WERE NOT BEING
18 USED FOR ANYTHING AND THAT THEY MEANT NOTHING AT THAT
19 POINT ALREADY.

20 BY MR. THOMAS:

21 Q. IF I CAN REFER YOUR ATTENTION TO PAGE 41.
22 AGAIN, I DON'T REMEMBER WHAT THIS WAS. IT'S THE EXHIBIT
23 THAT STARTS AT PAGE -- IT'S THE JULY 17TH E-MAIL, STARTS
24 AT PAGE 39. WE CAN JUST START THERE ACTUALLY.

25 A. BEAR WITH ME.

1 THE COURT: IT'S EXHIBIT 9.

2 GO AHEAD.

3 MR. THOMAS: EXHIBIT 9: THANK YOU, YOUR
4 HONOR.

5 THE WITNESS: IT STARTS AT WHAT PAGE?
6 JOSH, I APOLOGIZE.

7 MR. THOMAS: IT'S PAGE 39.

8 THE WITNESS: 39. CONFIRM, THANKS.

9 BY MR. THOMAS:

10 Q. YEAH, I THINK THAT IS THE START. GIVE ME A
11 SECOND, SORRY. YEAH, THAT IS THE START OF THE E-MAIL.

12 SO YOU HAD SENT AN E-MAIL, IT LOOKS LIKE,
13 TO ME JULY 17TH, THAT YOU ARE GOOD TO TALK MONDAY AT
14 3:00 P.M. --

15 A. YES.

16 Q. WHICH I GUESS WOULD BE JULY 20TH, IS THAT
17 CORRECT?

18 A. YES. AND THAT IS WHEN YOU AND I SPOKE WITH EMIL
19 THERE, AND YOU TOLD US WE HAVE TO PRODUCE DOCUMENTATION.
20 THIS WAS THE FIRST TIME ON JULY 17TH THAT WE LEARNED
21 THAT THERE WAS ANOTHER HEARING IN THE 2018 CASE, WE WERE
22 DEFENDANTS, AND THAT NOW WE HAVE TO ANSWER. IF WE DON'T
23 WANT TO HAVE TO ANSWER THE DISCOVERY QUESTIONS BY
24 FRIDAY, WE NEED TO POST A BOND. THAT IS WHEN WE STARTED
25 LOOKING FOR A BOND. ACTUALLY, WE STARTED LOOKING FOR A

1 BOND ON MONDAY BECAUSE WE NEVER SPOKE THAT DAY BECAUSE
2 WE WERE NOT GOOD TO SPEAK UNTIL MONDAY OF NEXT WEEK.
3 AND I BELIEVE YOU SAID THAT YOU SENT SOMETHING TO THE
4 COURT ASKING FOR AN EXTENSION.

5 Q. OKAY.

6 I UNDERSTAND THAT YOU REMEMBER ALL YOUR
7 PHONE CALLS. SO THAT IS FINE.

8 SO AGAIN, WHAT I'M ASKING YOU IS --

9 THE COURT: MR. THOMAS, I'M GOING TO STOP
10 YOU. I DON'T NEED EDITORIAL COMMENTARY.

11 MR. THOMAS: NO, NO, NO. I'M SORRY, YOUR
12 HONOR. THAT WAS NOT -- I'M TRYING TO GO THROUGH AND
13 ACTUALLY REMIND MYSELF WHAT THE NEXT THING WAS AGAIN.

14 I APOLOGIZE. IT WAS NOT EDITORIAL
15 COMMENTARY.

16 BY MR. THOMAS:

17 Q. SO IF YOU LOOK DOWN TO THE END OF THAT E-MAIL
18 CHAIN, YOU SAW FROM JUNE 19TH THAT WE HAD ACTUALLY -- I
19 INFORMED YOU OF WHAT THE BASIS FOR WHY WE NEEDED A NEW
20 APPEAL, CORRECT?

21 A. THIS IS ACTUALLY JULY 17TH.

22 Q. PAGE 41. LOOK AT PAGE 41.

23 A. LET ME GET TO PAGE 41. I APOLOGIZE.

24 Q. JUNE 19TH?

25 A. PAGE 41.

1 Q. YES.

2 A. YOU WROTE HERE: HEY EVERYONE, THE COURT DENIED
3 THE MOTION TO RECONSIDER AND USED THE RULE OF EVIDENCE
4 TO DO SO, WHICH IS WHOLLY IMPROPER.

5 Q. YOU DON'T NEED TO READ THE WHOLE THING. I'M
6 JUST SAYING, DO YOU REMEMBER READING THAT E-MAIL AT THAT
7 TIME?

8 A. I REMEMBER READING THE E-MAIL, AND I ASKED YOU
9 WHAT WAS -- I BELIEVE I ASKED YOU WHAT WAS THE MOTION TO
10 RECONSIDER WAS FOR. AND YOU SAID OH, IT WAS AGAINST A
11 DIFFERENT MOTION THAT WAS DENIED PRIOR. IT WAS AN
12 ANSWER THAT WE GAVE. SO I WANT TO SEND IT IN AGAIN, SO
13 THE JUDGE COULD RECONSIDER I BELIEVE ANOTHER ANSWER. I
14 DON'T REMEMBER EXACTLY WHAT IT WAS ABOUT, BUT I BELIEVE
15 THAT WAS THE -- IT WAS NOT ABOUT A JUDGMENT THOUGH.

16 Q. SO YOU UNDERSTAND THAT WE SUBMITTED A SECOND
17 MOTION TO RECONSIDER, CORRECT?

18 A. I'M GUESSING, YES.

19 Q. DO YOU UNDERSTAND WHAT WE DISCUSSED AND I WILL
20 GO THROUGH, I CAN FIND THE E-MAILS -- DO YOU UNDERSTAND
21 THAT WE DISCUSSED WHAT THE BASIS WAS FOR THE SECOND
22 MOTION TO RECONSIDER WAS THE SET OF RECORDINGS ACTUALLY
23 FROM MR. O'HARE?

24 A. LIKE I SAID TO YOU PRIOR, THAT NONE OF THESE
25 TIMES, JUNE 19TH UP UNTIL JULY, WAS I EVER NOTIFIED OR

1 EMIL NOTIFIED THAT THERE WAS A JUDGMENT. THE ONLY THING
2 THAT WE KEPT ON HEARING WAS HOW THE JUDGE IS A BAD GUY,
3 ABOUT HOW THE JUDGE IS AGAINST YOU, AND ABOUT HOW THE
4 JUDGE IS RULING IMPROPERLY AND NOT ON THE MERITS OF THE
5 CASE, AND THAT WHEN IT GOES TO THE THIRD CIRCUIT THAT WE
6 ARE GOING TO PREVAIL THERE BECAUSE THEY ARE GOING TO SEE
7 THAT THE JUDGE DIDN'T DO HIS JOB CORRECTLY.

8 Q. YOU HAVE TRIED TO PORTRAY MY PHRASING, AND I
9 KNOW FOR A FACT THAT I DID NOT USE THAT PHRASING, AND
10 FRANKLY -- AND WE CAN PULL UP A CALL THAT I ACTUALLY DID
11 IT WITH YOU, AND YOU ARE USING THAT PHRASING VERY WELL.

12 I'M ASKING YOU THE QUESTION: DO YOU
13 REMEMBER THAT THERE WERE TWO MOTIONS TO RECONSIDER AND
14 THIS IS WHEN I INFORMED YOU THAT --

15 A. I REMEMBER THERE WERE MOTIONS TO RECONSIDER,
16 JOSH. I DON'T REMEMBER EXACTLY WHAT THEY WERE FOR, AND
17 FROM WHAT I REMEMBER, YOU NEVER EXPLAINED TO US WHAT
18 THEY WERE FOR.

19 Q. BUT YOU REMEMBER RECEIVING THIS E-MAIL, CORRECT?

20 A. YES, IF IT SAYS HERE I RECEIVED IT, THEN I DID.

21 Q. AND IN THE E-MAIL IT ACTUALLY DISCUSSES THE
22 POST-JUDGMENT DISCOVERY, CORRECT? IT DISCUSSED IT IN
23 THE SECOND PARAGRAPH OR THIRD PARAGRAPH. ALSO I WILL
24 SUBMIT -- AND IT DISCUSSES THE POST-JUDGMENT DISCOVERY.

25 A. I'LL ALSO SUBMIT BLANKET OBJECTIONS TO HIS MOST

1 RECENT ATTEMPTS AS POST JUDGMENT DISCOVERY TO KEEP
2 FIGHTING HIM ON THAT AS WELL, TO SLOW IT DOWN.

3 YOU SAID THAT -- I BELIEVE YOU SAID THAT
4 YOU ARE GOING TO SUBMIT SOMETHING TO BASICALLY HOLD OFF
5 THINGS BECAUSE THERE IS MORE EVIDENCE, AND YOU THEN TOLD
6 ME THAT I NEED TO GIVE YOU \$505 FOR A FILING FEE.

7 Q. BUT SPECIFICALLY ON JUNE 19TH REFERENCES THE
8 POST-JUDGMENT DISCOVERY, CORRECT?

9 A. I'M NOT SURE WHAT POST-JUDGMENT MEANS, JOSH.
10 YOU NEVER EXPLAINED IT TO ME. IF YOU HAD EXPLAINED TO
11 ME THEN, I WOULD HAVE PROBABLY KNOWN WHAT IT WAS.

12 Q. THE FILING FEE. WHEN WE FILED FOR THE APPEAL.
13 YOU UNDERSTOOD THAT THE FILING FEE WAS TO COVER THE
14 ACTUAL APPEAL BEING FILED. AT THE TIME THE APPEAL WAS
15 BEING FILED, DID YOU THINK THAT YOU STILL HAD -- ALL OF
16 THAT INFORMATION THAT YOU SUBMITTED, DO YOU STILL THINK
17 IT WAS IMPORTANT IN THE CASE, THOSE RECORDINGS?

18 A. OF COURSE, BECAUSE YOU SAID THAT YOU WERE GOING
19 TO USE THEM IN THE THIRD CIRCUIT.

20 Q. ALL RIGHT. FINE. ALL RIGHT. GIVE ME ONE
21 SECOND.

22 DO YOU REMEMBER -- SCRATCH THAT. I'M NOT
23 GOING TO PAGE THROUGH THAT.

24 BEAR WITH ME. GIVE ME ONE SECOND.

25 YOU STATED THAT YOU'RE ACKNOWLEDGING THAT

1 WE DISCUSSED THE CALL ON APRIL 22ND. THAT WAS BEFORE
2 YOU SIGNED THE CERTIFICATION. YOU REMEMBER THAT PHONE
3 CALL, CORRECT?

4 A. WHEN WE SPOKE, IT WAS ON APRIL 23RD, FROM WHAT I
5 REMEMBER, AND THAT WAS WHEN YOU ASKED ME ABOUT THE
6 CERTIFICATION. I'M NOT -- GIVE ME ONE SECOND. I WILL
7 TELL YOU WHEN IT WAS. IT WAS -- WE SPOKE ON THE 20TH
8 ABOUT THE CERTIFICATION. ON THE 23RD I GOT IT OVER TO
9 YOU, I BELIEVE, OR YOU E-MAILED IT TO ME. I DON'T
10 REMEMBER THE EXACT CHAIN OF EVENTS, BUT I REMEMBER WE
11 DID SPEAK ABOUT THE CERTIFICATION. AND YOU TOLD ME ONCE
12 AGAIN THAT THE JUDGE HAS SOMETHING AGAINST ME, DON'T
13 WORRY ABOUT IT. I'M HIRING WEISBERG OR WEINBERG TO BE
14 THE FACE. I'M GOING TO DO WORK AT THE BACK END. YOU
15 NEVER TOLD US THAT THE CERTIFICATION WAS NOT THE
16 JACOVETTI VERSUS SHELTON CASE. WE AT ALL POINTS IN TIME
17 THOUGHT IT WAS IN OUR CASE, WHICH IT OBVIOUSLY WAS NOT.

18 Q. OKAY. YOU'VE SAID THAT A FEW TIMES NOW.

19 A. YES, I HAVE, BECAUSE THAT IS THE TRUTH. AND I
20 HAVE SAID IT A FEW TIMES, AND I WILL SAY IT AGAIN.

21 Q. OKAY.

22 IN REGARDS TO -- ONE SECOND.

23 DO YOU REMEMBER BACK ON APRIL 24TH WE
24 DISCUSSED THE POSSIBILITY OF A PROTECTIVE ORDER IN
25 REGARD TO THE DISCOVERY?

1 A. WE NEVER SPOKE ABOUT THAT, JOSH.

2 Q. DO YOU REMEMBER ANYTHING -- AN E-MAIL REGARDING
3 A PROTECTIVE ORDER ON DISCOVERY?

4 A. I DON'T REMEMBER, NO. AND I DON'T HAVE ANY
5 E-MAIL WITH IT FROM -- THAT I HAVE IN FRONT OF ME. IF
6 YOU HAVE AN EXHIBIT WITH IT, I WILL BE MORE THAN HAPPY
7 TO LOOK AT IT.

8 Q. OKAY. GIVE ME ONE SECOND. I WILL PULL IT UP
9 BECAUSE WE DID DISCUSS SUBMITTING A PROTECTIVE ORDER ON
10 APRIL 20TH OR 22ND. SO GIVE ME ONE SECOND.

11 A. I'M LOOKING FOR SOME STUFF HERE AS WELL THAT I
12 PRINTED OUT. SO I WILL HOPEFULLY HELP YOU FIND IT.

13 Q. ON APRIL 24TH, I SENT AN E-MAIL SAYING: GOOD
14 MORNING, I'M STILL WORKING ON THE PROTECTIVE ORDER. I
15 WANT TO MAKE SURE IT INCLUDES EVERYTHING IT POSSIBLY CAN
16 TO SHOW YOU I HAVE GOOD CAUSE FOR IT. IF YOU HAVE ANY
17 QUESTIONS --

18 THE COURT: COUNSEL, WHAT ARE WE LOOKING
19 AT?

20 MR. THOMAS: YOU KNOW WHAT? I DON'T
21 ACTUALLY -- I DIDN'T SEE THIS AS PART OF THE EXHIBITS.

22 IF YOUR HONOR WOULD LIKE, I CAN ACTUALLY
23 SEND IT OUT SO YOU CAN REFER TO IT. I CAN E-MAIL IT ON
24 THAT SAME CHAIN PREVIOUSLY.

25 THE COURT: I MEAN, I DON'T WANT US JUST

1 TALKING ABOUT STUFF IN THE ABSTRACT. THERE IS STUFF
2 THAT'S IN THE RECORD OR THERE IS NOT.

3 MR. THOMAS: I WILL SUBMIT THIS ON THE
4 RECORD RIGHT NOW, YOUR HONOR. GIVE ME ONE MOMENT.

5 WHAT EXHIBIT, YOUR HONOR. IS IT
6 EXHIBIT 13?

7 THE COURT: WE ARE ON EXHIBIT 11.

8 MR. THOMAS: I APOLOGIZE. THIS WAS NOT
9 ACTUALLY IN THE NOTE. I DON'T BELIEVE IT WAS IN THE
10 DOCUMENTS. IT MIGHT BE. I JUST DON'T HAVE IT LISTED,
11 SO I WILL JUST RESEND IT TO MAKE IT QUICKER.

12 I'M GOING TO SEND IT TO EVERYONE ON THAT
13 LIST AND I WILL MAKE SURE, MR. SHARGEL, IT GOES DIRECTLY
14 TO YOU, TOO.

15 MR. SHARGEL: OKAY. PLEASE.

16 MR. THOMAS: I WILL SEND IT TO EVERYONE
17 ON THAT LIST.

18 I JUST SENT IT OUT. IT'S ON THAT SAME
19 CHAIN. SHARE A COPY OF IT. IT'S MARKED AS EXHIBIT 11.
20 BY MR. THOMAS:

21 Q. AND MR. SHARGEL, I JUST SENT IT DIRECTLY TO YOUR
22 E-MAIL TOO.

23 A. I CAN'T LOOK AT MY E-MAILS. SO MR. GINZBURG
24 WILL PULL IT UP FOR ME BECAUSE I'M ON ZOOM ON MY PHONE.
25 SO BEAR WITH ME A MOMENT.

1 Q. AGAIN, I DON'T KNOW IF IT WAS INCLUDED. I DON'T
2 SEE IT.

3 A. WAS IT AT 9:36 A.M. THAT YOU SENT IT?

4 Q. YES. DO YOU SEE THAT?

5 THE COURT: HOLD ON.

6 I DON'T HAVE ANYTHING IN FRONT OF ME YET.
7 I WOULD LIKE TO BE LOOKING AT THE EXHIBITS THAT WE ARE
8 LOOKING AT IF YOU ARE GOING TO EXAMINE A WITNESS ABOUT
9 THEM.

10 MR. THOMAS: I JUST E-MAILED IT OUT
11 AGAIN, YOUR HONOR.

12 THE COURT: I THINK I HAVE IT.

13 SEE, YOU JUST FORWARDED IT, MR. THOMAS,
14 IS THAT RIGHT? YOU DID NOT ATTACH IT AS AN EXHIBIT?

15 MR. THOMAS: I DID ATTACH IT AS AN
16 EXHIBIT, ACTUALLY. I PRINTED IT TO A PDF AND ATTACHED
17 IT AS AN EXHIBIT TO MR. SHARGEL AND ALL THE ATTORNEYS IN
18 YOUR CHAMBERS.

19 THE COURT: OKAY.

20 MR. ARTOM-GINZBURG: YOUR HONOR, I
21 BELIEVE IT'S IN MY EXHIBITS. IF YOU HOLD ON ONE SECOND,
22 I WILL GIVE YOU THE PAGE NUMBER.

23 THE COURT: I HAVE MR. THOMAS'S E-MAIL
24 NOW. WE CAN JUST GO THAT WAY. GO AHEAD.

25 MR. SILVESTRO: YOUR HONOR, EXCUSE ME.

1 IT IS MR. SILVESTRO. I DON'T KNOW THAT HE PUT ME ON THE
2 LIST. I DON'T HAVE IT.

3 IF MR. ARTOM-GINZBURG HAS A PAGE NUMBER,
4 I CAN PULL IT UP ON MY SCREEN.

5 THE COURT: MR. SILVESTRO, IT WAS
6 SUBMITTED TO JSILVESTRO@MUTZELWESLER.COM.

7 MR. SILVESTRO: NO. THAT IS AN OLD
8 E-MAIL ADDRESS. I HAVE BEEN RECEIVING STUFF FROM THE
9 COURT AT JSJ@JOSEPHSILVESTROLAW.COM.

10 MR. ARTOM-GINZBURG: YOUR HONOR --

11 THE COURT: HOLD ON, HOLD ON. STOP.
12 THERE IS WAY TOO MUCH CROSS-TALK THAT IS GOING TO MAKE
13 THIS TRANSCRIPT A MESS.

14 SO FIRST OF ALL, MR. SILVESTRO, I THINK
15 WE TOLD YOU YOU NEED TO UPDATE YOUR E-MAIL WITH THE
16 COURT BECAUSE WHAT MR. THOMAS SENT IT TO IS WHAT THE
17 COURT HAS ON THE DOCKET.

18 MR. ARTOM-GINZBURG, DO YOU HAVE A PAGE IN
19 YOUR SUBMISSIONS THAT WE CAN POINT TO?

20 MR. ARTOM-GINZBURG: YES, YOUR HONOR. IT
21 IS ON PAGE 18 OF MY SUBMISSIONS.

22 THE COURT: OKAY.

23 MR. SILVESTRO, WHY DON'T YOU SCROLL DOWN
24 TO PAGE 18, AND WHY DON'T WE ALL WORK OFF OF THAT
25 VERSION OF IT, MR. ARTOM-GINZBURG, IF YOU CAN GIVE THAT

1 TO THE WITNESS.

2 MR. SHARGEL: I HAVE IT IN FRONT OF ME.

3 MR. THOMAS: THAT WILL BE MARKED AS
4 EXHIBIT 11 THEN.

5 THE COURT: SO EXHIBIT 11, PAGE 18 OF
6 MR. ARTOM-GINZBURG'S SUBMISSION.

7 MR. THOMAS: SORRY ABOUT THAT.

8 BY MR. THOMAS:

9 Q. MR. SHARGEL, BACK TO THE QUESTION ON IT.

10 DO YOU REMEMBER RECEIVING THIS E-MAIL?

11 MR. SHARGEL?

12 A. I'M READING THE E-MAIL, JOSH. BEAR WITH ME ONE
13 MOMENT, PLEASE.

14 Q. I JUST COULD NOT SEE YOU ON THE SCREEN.

15 A. CAN YOU SEE ME NOW?

16 Q. YES, NOW I CAN.

17 A. PERFECT. I JUST READ IT.

18 Q. DO YOU REMEMBER RECEIVING THAT E-MAIL?

19 A. I DON'T REMEMBER RECEIVING THE E-MAIL, BUT I'M
20 LOOKING AT THE E-MAIL NOW.

21 Q. DO YOU HAVE ANY REASON TO THINK THAT THAT E-MAIL
22 WAS NOT RECEIVED BY YOU?

23 A. I HAVE NO REASON TO BELIEVE THAT IT WAS NOT.

24 Q. OKAY.

25 IT IS YOUR UNDERSTANDING THAT THERE WAS

1 A -- THIS IS NOT AN EXHIBIT. I'M JUST GOING TO PULL UP
2 DOCKET FOR A REFERENCE.

3 IT IS YOUR UNDERSTANDING THAT EVENTUALLY
4 ON JUNE 1ST THERE WAS A MOTION FOR A PRELIMINARY
5 INJUNCTION THAT WAS FILED, CORRECT.

6 A. GIVE ME ONE SECOND. LET ME LOOK AT THE TIME
7 LINES. I SEE A MOTION FOR PRELIMINARY INJUNCTION.

8 Q. THAT ESSENTIALLY WAS -- WE WERE DISCUSSING
9 TRYING TO ACTUALLY STAY THE NEED FOR THE DISCOVERY.

10 A. TO BE HONEST WITH YOU, I DON'T KNOW WHAT A
11 PRELIMINARY INJUNCTION MEANS. SO -- AND I DON'T
12 REMEMBER HAVING THAT CONVERSATION WITH YOU BECAUSE IF WE
13 WERE ASKED ON JUNE 1ST FOR INFORMATION FOR A JUDGMENT,
14 WE WOULD HAVE PRESENTED IT THEN BECAUSE WE HAD TO BY
15 YOUR HONOR'S ORDER.

16 Q. YOU UNDERSTAND THAT THE NOTICE OF APPEAL WAS
17 FILED JUNE 29TH, CORRECT?

18 A. IT WAS NOT -- THERE WAS NOTHING FILED FOR MOTION
19 OF APPEAL ON JUNE 29TH.

20 Q. NO. NO. ON THE DOCKET IT SHOWS THERE WAS A
21 NOTICE OF APPEAL FILED ON JUNE 29TH.

22 A. YES, I SEE IT HERE.

23 Q. AND THAT STEMS FROM THE JUNE 17TH ORDER,
24 CORRECT?

25 A. JOSH, I DO NOT KNOW. I'M NOT AN ATTORNEY.

1 Q. LET ME GO BACK TO MY NOTES. SORRY.

2 A. SORRY, I JUST HAD A VERY BAD HEADACHE THIS
3 MORNING.

4 Q. I UNDERSTAND.

5 PAGE 54. ONE SECOND. LET ME SEE WHAT
6 THAT IS REFERENCING. APRIL 28TH, 2020, PAGE 54 IN MY
7 NOTES.

8 A. CAN I PULL IT UP IF YOU DON'T MIND?

9 Q. I WANT YOU TO TELL ME WHEN YOU GET IT.

10 A. OKAY. PERFECT.

11 THE COURT: WE ARE MARKING THIS AS AN
12 EXHIBIT?

13 MR. THOMAS: YES, I BELIEVE IT WILL BE
14 EXHIBIT 12, YOUR HONOR.

15 THE WITNESS: THIS IS BOB SENDING YOU AN
16 E-MAIL.

17 BY MR. THOMAS:

18 Q. YUP. DO YOU SEE WHAT IT SAYS?

19 A. JOSH, I SENT THE PARTIALLY EXECUTED
20 CERTIFICATION TO BARRY AND EMIL FOR EXECUTION.

21 Q. AND DID YOU RECEIVE IT AT THAT TIME, THE
22 CERTIFICATION?

23 A. THAT WAS THE SAME CERTIFICATION THAT YOU AND I
24 SPOKE OF EITHER ON THE 20TH OR THE 23RD OF APRIL. BOB
25 SIGNED IT FIRST, SENT IT TO EMIL AND I. WE SIGNED IT

1 Q. RIGHT. I UNDERSTAND. DID MR. JACOVETTI EVER
2 TELL YOU THAT WE WOULD BE DOING AN AMENDED COMPLAINT?

3 A. NO. ALL I KNEW WAS THAT MY NAME AND EMIL'S NAME
4 WERE BEING TAKEN OUT OF THE COMPLAINT THEY ORIGINALLY
5 FILED. HOW YOU DO IT AND WHY YOU DID IT, THAT IS ON
6 YOU.

7 Q. LET'S GO TO THAT. GO TO PAGE 265.

8 A. BEAR WITH ME ONE MOMENT.

9 THE COURT: HOLD ON, I WANT TO KEEP A
10 CLEAN RECORD HERE, MR. THOMAS. YOU ARE BLOWING PAST
11 SOME OF THOSE NICETIES. SO EXHIBIT 13 IS PAGE 55 IN
12 YOUR PDF?

13 MR. THOMAS: YES, I GUESS IT IS THE
14 SECOND ONE. I APOLOGIZE, YOUR HONOR. SO EXHIBIT 13.
15 THE ONE RIGHT AFTER IT, BUT, YES.

16 THE COURT: AND THEN EXHIBIT 14 IS GOING
17 TO BE AT PAGE 265. NO. 265 IS ALREADY IN AS EXHIBIT 5.

18 MR. THOMAS: I LOST THE COMPUTER. I LOST
19 THE EXHIBIT. SO I APOLOGIZE.

20 MR. SHARGEL: I'M HERE. I'M ON PAGE 265.
21 I HAVE NEVER SEEN THIS E-MAIL BETWEEN YOU AND ROBERT AS
22 WELL.

23 BY MR. THOMAS:

24 Q. THAT IS FINE. DECEMBER 19TH, YOU STATED YOU
25 DON'T REMEMBER HAVING A DISCUSSION WITH MR. JACOVETTI IN

1 REGARDS TO -- IN DECEMBER?

2 A. NO, I DID NOT. THIS IS A CONVERSATION BETWEEN
3 YOU AND MR. JACOVETTI. THIS IS NOT A CONVERSATION
4 BETWEEN YOU, ME OR EMIL.

5 Q. CORRECT. AND THEN WHAT ABOUT BETWEEN
6 OCTOBER 30TH AND DECEMBER 19TH? DO YOU REMEMBER
7 SPEAKING TO MR. JACOVETTI AT ALL?

8 A. I SPEAK WITH MR. JACOVETTI ALL THE TIME FOR
9 OTHER MATTERS BESIDE THIS, JOSH. I DON'T REMEMBER EVERY
10 SINGLE THING THAT I SPOKE TO MR. JACOVETTI ABOUT.

11 Q. DO YOU REMEMBER SPEAKING TO HIM BETWEEN
12 OCTOBER 30TH AND DECEMBER 19TH?

13 A. LIKE I SAID TO YOU BEFORE, I SPEAK TO
14 MR. JACOVETTI ALL THE TIME. I DON'T REMEMBER EVERY ONE
15 OF OUR CONVERSATIONS.

16 Q. ON THIS MATTER. DID YOU SPEAK WITH HIM ON THIS
17 MATTER BETWEEN THAT TIME?

18 A. WHICH MATTER WOULD THAT BE, JOSH?

19 Q. ANYTHING REGARDING -- ANYTHING REGARDING --

20 (TECHNICAL INTERRUPTION.)

21 THE COURT: ONE AT A TIME. ONE AT A
22 TIME. YOU CANNOT TALK OVER EACH OTHER. MR. SHARGEL,
23 JUST WAIT. WE CAN HAVE ONE PERSON TALKING AT A TIME OR
24 IT DOES NOT WORK FOR THE TRANSCRIPT AND FOR THE COURT
25 REPORTER.

1 THE WITNESS: I APOLOGIZE, YOUR HONOR.

2 THE COURT: SO MR. SHARGEL, DID YOU
3 FINISH YOUR ANSWER?

4 THE WITNESS: NO. I HAVE NEVER -- LIKE I
5 SAID TO YOU BEFORE, JOSH, WHATEVER CONVERSATION YOU HAD
6 WITH MR. JACOVETTI, I WAS NEVER PRIVY TO THEM. I KNOW
7 NOTHING ABOUT YOUR CONVERSATION WITH HIM, WHAT
8 DEFENDANTS HE WANTED, WHAT DEFENDANTS HE DID NOT WANT,
9 LOOKING AT THE E-MAIL YOU JUST SHOWED ME. MR. JACOVETTI
10 AND I SPEAK ALMOST EVERY SINGLE DAY ABOUT DIFFERENT
11 MATTERS. SOME OF THE MATTERS ARE WORK RELATED. SOME OF
12 THE MATTERS ARE PERSONAL RELATED.

13 BY MR. THOMAS:

14 Q. I UNDERSTAND. MR. SHARGEL, WE LOST YOU AGAIN.

15 A. I KNOW. I PLUGGED MY PHONE IN. I SHOULD BE
16 BACK NOW.

17 Q. YOU ARE BACK.

18 I'M GOING TO REFER YOU TO PAGE 15.

19 A. BEAR WITH ME ONE MOMENT. PAGE 15, YOU SAID?

20 Q. YEAH.

21 A. GIVE ME ONE SECOND. MR. GINZBURG IS HAVING AN
22 ISSUE WITH THE COMPUTER. PAGE 15, CORRECT?

23 Q. YES.

24 A. OKAY. GIVE ME ONE MOMENT. 15. OKAY.

25 Q. DO YOU SEE WHERE IT SAYS HERE MAY 26, 2020?

1 A. YES.

2 THERE IS A CONVERSATION WITH YOU, BETWEEN
3 YOU AND MR. JACOVETTI. MR. JACOVETTI INITIATED THE
4 CONVERSATION, AND HE SAID: JOSH, PLEASE REVIEW THE
5 ATTACHED LETTER, ANOTHER SERIAL PLAINTIFF LIKELY
6 DIRECTED TO BARRY BY SHELTON. CAN WE SEND HIM A COPY OF
7 THE PENDING LITIGATION NOTING THAT HE CAN AND WILL BE
8 ADDED IF NEEDS, NO PREDICATE PROOF.

9 Q. DO YOU UNDERSTAND WHAT HE IS TALKING ABOUT
10 THERE?

11 A. NO, I DO NOT.

12 Q. IF YOU SCROLL DOWN TO THE NEXT PAGE.

13 MR. THOMAS: WE WILL MARK THIS AS
14 EXHIBIT 13.

15 THE COURT: 14.

16 MR. SHARGEL: WHICH PAGE DO YOU WANT ME
17 TO GO TO?

18 MR. THOMAS: 14, YOUR HONOR.

19 THE COURT: HOLD ON, WAIT. PAGE 15 IS
20 EXHIBIT 14?

21 MR. THOMAS: IT IS A CHAIN. 15 AND THEN
22 16 AND --

23 THE COURT: 15 THROUGH 17. OKAY.

24 MR. THOMAS: YES, THAT IS EXHIBIT 14.

25 THE WITNESS: WHAT IS THE NEXT PAGE YOU

1 WANTED ME TO LOOK AT?

2 BY MR. THOMAS:

3 Q. PAGE 16, THE NEXT PAGE.

4 A. I'M HERE NOW.

5 Q. DO YOU REMEMBER HAVING A CALL ON FEBRUARY 27TH
6 AS REFERENCED IN THIS E-MAIL?

7 A. BEAR WITH ME ONE SECOND.

8 THE COURT: MR. THOMAS, THIS STILL LOOKS
9 LIKE A SINGLE DOCUMENT TO ME.

10 THE WITNESS: I'VE NEVER HAD A
11 CONVERSATION ABOUT THIS BECAUSE I HAVE NOTHING IN MY
12 PHONE RECORDS IN REGARDS TO A CONVERSATION ABOUT THIS.
13 I BELIEVE THAT THIS CONVERSATION WAS BETWEEN YOU AND
14 MR. JACOVETTI, AND HE WROTE TO YOU. I WAS NEVER CC'D ON
15 IT: JOSH, HOW LATE TODAY BETWEEN 4 OR 5? I WAS NEVER
16 PRIVY TO THAT CONVERSATION AND I SHOULD NOT HAVE BEEN,
17 BECAUSE IF YOU SEE THE E-MAIL, THIS IS SUPPOSED TO BE
18 BETWEEN YOU AND MR. JACOVETTI.

19 BY MR. THOMAS:

20 Q. MR. SHARGEL, I HEAR WHAT YOU ARE SAYING.

21 IF YOU LOOK AT PAGE 16 UNDER THE WORDS
22 "DEMAND LETTER," WHO IS NAMED RIGHT UNDER DEMAND LETTER?

23 A. I DON'T SEE ANYTHING HERE THAT SAYS DEMAND
24 LETTER, JOSH.

25 Q. IF YOU LOOK AT PAGE 16 AT THE VERY TOP. THE

1 HEADER ON THE E-MAIL SAYS DEMAND LETTER. DO YOU SEE
2 THAT?

3 A. YES. AND I WILL EXPLAIN TO YOU THAT I ANSWERED
4 THE E-MAIL THAT SAYS "WORK FOR ME AS WELL" FROM PAGE 15.

5 AND THEN BOB WROTE TO YOU SEPARATELY,
6 MR. JACOVETTI: JOSH, HOW ABOUT LATE TODAY BETWEEN 4 OR
7 5, AND I WAS NEVER ON THAT E-MAIL CHAIN MOVING FORWARD.
8 THAT E-MAIL IS BETWEEN YOU AND ROBERT.

9 IF I WAS STILL ON THAT E-MAIL CHAIN, THEN
10 I WOULD HAVE HAD THIS IN MY E-MAIL BOX, A, AND IT WOULD
11 ALSO HAVE ME AS EITHER CC OR TWO-PERSON.

12 Q. MR. SHARGEL, WITH ALL DUE RESPECT, IF YOU LOOK
13 AT THE TIMING FOR WHERE YOU WERE SENT THE RESPONSE,
14 WORKS FOR ME AS WELL, WHAT TIME OF DAY WAS THAT SENT?

15 A. I SENT THAT AT 10:10 A.M.

16 Q. WHEN WAS THE E-MAIL SENT TO BOB AND YOU SENT,
17 WHAT TIME?

18 A. BOB SENT YOU AN E-MAIL AT 9:26 A.M.

19 Q. WHEN YOU SENT IT AT 10:10, WHO DID YOU SEND IT
20 TO?

21 A. TO YOU AND BOB.

22 Q. WHAT WOULD YOU BE RESPONDING TO IF YOU SAID
23 WORKS FOR ME AS WELL, IF IT WAS NOT RESPONDING TO
24 MR. JACOVETTI'S BETWEEN 4 AND 5?

25 A. I WILL EXPLAIN TO YOU. IT WAS FOR YOU SENDING A

1 COPY OF SOME LITIGATION TO THAT OTHER PERSON THAT YOU
2 CONSIDERED -- THAT WAS, LET'S SAY, ANOTHER SERIAL
3 PLAINTIFF. I CONTEST THAT YOU SENDING A PIECE OF -- A
4 COPY OF WHATEVER LITIGATION IT WAS AS WELL.

5 Q. YOU DON'T REMEMBER THE PHONE CALL THAT WE HAD
6 THAT DAY THAT SPECIFICALLY REFERENCED THAT ISSUE AND
7 INCLUDING HIM IN THE NEW LITIGATION?

8 A. I WAS NOT ON THAT PHONE CALL, JOSH.

9 Q. AGAIN, YOU DON'T THINK THAT THERE WAS A PHONE
10 CALL THAT MR. JACOVETTI INITIATED BETWEEN YOURSELF AND
11 MYSELF?

12 A. IF HE DID, I WOULD HAVE HAD IT HERE, JOSH. MOST
13 OF THE TIME THE PHONE CALLS WERE INITIATED BY EITHER YOU
14 OR ME, THEN WE GOT JACOVETTI ON THE PHONE. WHATEVER YOU
15 AND MR. JACOVETTI SPOKE ABOUT PRIVATELY, I WAS NOT
16 PRESENT FOR THOSE CONVERSATIONS. MAYBE UP UNTIL 27TH
17 YOU AND MR. JACOVETTI HAD A PHONE CALL BUT THAT WAS NOT
18 A PHONE CALL THAT I WAS PART OF.

19 Q. SO YOU SAYING THAT IT WORKS FOR YOU AS WELL,
20 THAT DOES NOT MEAN TO YOU THAT YOU WANT TO BE ON THAT
21 CALL TOO?

22 A. NO. WHAT WORKS FOR ME AS WELL, I RESPONDED TO
23 YOU SENDING A COPY OF THE LITIGATION.

24 Q. THAT IS NOT HOW THAT E-MAIL CHAIN LOOKS,
25 MR. SHARGEL, BUT THAT IS FINE. I UNDERSTAND WHAT YOU

1 ARE TRYING TO SAY.

2 THE COURT: MR. THOMAS, I DON'T NEED
3 EDITORIAL COMMENTARY FROM YOU. YOU CAN ASK QUESTIONS.

4 MR. THOMAS: IT'S NOT EDITORIAL
5 COMMENTARY. I UNDERSTAND WHAT YOU ARE SAYING.

6 THE COURT: IT IS EDITORIAL COMMENTARY.
7 YOU DON'T NEED TO ARGUE WITH ME. YOU ARE CLEARLY MAKING
8 A COMMENT ON HIS TESTIMONY.

9 MR. THOMAS: OKAY. I UNDERSTAND, YOUR
10 HONOR. I WILL REFRAIN.

11 BY MR. THOMAS:

12 Q. CAN I TAKE YOUR ATTENTION TO THE E-MAIL -- I'M
13 SORRY, PAGE 24. BEAR WITH ME A MOMENT. THIS WAS ON
14 JULY 30TH. YOU ASKED --

15 A. I REMEMBER THIS VIVIDLY. YOU ACTUALLY ASKED US
16 TO SEND YOU BACK A NOTARY STATING THAT WHATEVER WE
17 ANSWERED IN THE QUESTIONS BEFORE WHEN WE DISCLOSED OUR
18 BANKING INFORMATION, WHEN WE ASKED YOU TO REDACT IT AND
19 YOU DIDN'T, THAT EVERYTHING THAT WE ANSWERED WAS TRUE
20 AND ACCURATE, AND BOTH EMIL AND I SIGNED IT. WE WENT
21 ACROSS THE STREET TO THE BANK AND THEY NOTARIZED IT, AND
22 WE SENT IT OVER TO YOU.

23 Q. SO YOU ARE AGREEING -- AGAIN, I'M JUST TRYING TO
24 MAKE VERY CLEAR FOR THE RECORD THAT YOU SIGNED THOSE TWO
25 DOCUMENTS AND YOU KNEW THAT IT WAS REFERRING TO THE

1 DISCOVERY RESPONSES YOU SENT ME, CORRECT?

2 A. FROM WHAT I UNDERSTAND THERE WAS -- YES.

3 Q. I'M JUST TRYING TO CONFIRM THAT IT IS YOUR
4 SIGNATURE. AGAIN, MR. ARTOM MADE AN ASSERTION IT
5 WASN'T, SO I'M JUST TRYING TO MAKE IT CLEAR. SO YOU
6 SIGNED IT IMMEDIATELY, CONFIRMING THAT THAT NOTARY WAS
7 ATTACHED TO THE DISCOVERY YOU SENT, CORRECT?

8 A. YES.

9 MR. THOMAS: AGAIN, JUST SO WE ARE
10 CLEAR -- I FORGET. DID I MARK THAT AS EXHIBIT 15?

11 THE COURT: IT IS EXHIBIT 15.

12 SO ARE YOU MOVING IT IN? IS THAT WHAT
13 YOU SAID?

14 MR. THOMAS: YES, YOUR HONOR.

15 THE COURT: DOES ANYBODY HAVE ANY
16 OBJECTIONS TO MOVING IT IN?

17 SO WE WILL MOVE THAT IN.

18 (EXHIBIT 15, PAGES 24 OF THE COMBINED
19 DISCOVERY PDF, ADMITTED INTO EVIDENCE.) .

20 THE COURT: MR. THOMAS, WHILE WE ARE ON
21 IT, YOU HAVE NOT MOVED IN 11 THROUGH 14.

22 MR. THOMAS: I JUST REALIZED.

23 SHOULD IT BE EASIER TO DO IT NOW OR CAN
24 WE JUST DO IT AT THE END FOR EACH ONE.

25 THE COURT: I DON'T CARE WHEN WE DO IT.

1 WE WILL JUST DO IT AT THE END. THAT IS FINE. GO AHEAD.

2 MR. THOMAS: THAT IS FINE.

3 BY MR. THOMAS:

4 Q. MR. SHARGEL, AT PAGE 45 IF I CAN DIRECT YOUR
5 ATTENTION.

6 JUST TO MAKE IT CLEAR, THIS IS THE
7 DISCOVERY THAT YOU SIGNED AS NOTARY PUBLIC, CORRECT?

8 A. YES. THIS IS WHAT YOU SENT US ON JULY THE 20TH
9 IN REGARDS TO THE JUDGMENT. THIS IS WHY WE HAD A TEN
10 MINUTE CONVERSATION TO DISCUSS THIS WITH YOU AS WELL.
11 WHAT DO WE HAVE TO DO AND HOW DO WE HAVE TO DO IT? AND
12 THIS IS WHEN YOU TOLD US TO LOOK INTO GETTING A BOND FOR
13 10 PERCENT OR 5 PERCENT -- I DON'T REMEMBER THE EXACT
14 DOLLAR AMOUNT -- IN ORDER TO STOP THIS WHILE THIS CASE
15 IS STILL GOING TO THE 3RD CIRCUIT FOR APPEAL.

16 Q. AND THEN SINCE YOU'RE MENTIONING THAT BOND, DO
17 YOU REMEMBER THE TEXT THAT I SENT YOU SAYING THAT IT WAS
18 ACTUALLY FOR THE FULL AMOUNT. THE JUDGE SENT IT, SO
19 THAT WAY YOU STILL SHOULD PURSUE THE BOND AS NEEDED?

20 A. IF YOU GIVE ME A SECOND, I'LL PRINT THAT OUT, MY
21 TEXT MESSAGES. GIVE ME A MOMENT.

22 Q. WE CAN ACTUALLY REFER TO THOSE IF IT'S EASIER ON
23 --

24 A. YEAH. LIKE I SAID BEFORE, THAT IT'S PERFECT. I
25 ALSO SPOKE WITH THE CLIENT. IT WAS ACTUALLY THE JUDGE

1 WHO SET THE AMOUNT OF 10 PERCENT.

2 AS I STATED PREVIOUSLY, WE HAD THAT
3 CONVERSATION AND YOU TOLD ME THAT IT HAS TO -- YOU TOLD
4 THAT YOU HAD A FORMER CLIENT THAT DID 10 PERCENT AND IT
5 WAS ONLY 10 PERCENT BECAUSE THE JUDGE SAID IT, THAT YOU
6 HAVE TO -- OF THE TOTAL JUDGMENT, THAT IS WHAT THE
7 POSTED BOND FOR THE AMOUNT. WE REVIEWED IT YESTERDAY.
8 YOU SAID YOU CONTACTED THE CLIENT AND YOU REVIEWED IT.
9 I REMEMBER HAVING THAT CONVERSATION WITH YOU.

10 Q. OKAY. I UNDERSTAND.

11 MR. THOMAS: AND BEFORE I FORGET, THE
12 E-MAIL AT 45 I WOULD LIKE TO STATE AS EXHIBIT 16.

13 THE COURT: ANYBODY HAVE ANY OBJECTION?

14 WE WILL RECEIVE IT AS EXHIBIT 16.

15 (EXHIBIT 16, PAGE 45 OF THE COMBINED
16 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

17 BY MR. THOMAS:

18 Q. AT THAT TIME DID YOU PURSUE A BOND?

19 A. YES.

20 Q. AND DID YOU GET A BOND?

21 A. NO. I DID NOT, BECAUSE I EXPLAINED TO YOU
22 BEFORE THAT WE DON'T HAVE THE MONEY TO GET THE BOND.
23 YOU TOLD US, DON'T WORRY, HOLD OFF, GIVE ME ALL THE
24 STUFF THAT YOU CAN. I'M GOING TO KEEP REO AT BAY ONCE
25 AGAIN. WE GAVE YOU THE STUFF AND WE ALSO ASKED TO

1 REDACT INFORMATION ON IT, AND YOU DID NOT. LITERALLY A
2 WEEK LATER OUR BANK ACCOUNTS WERE FROZEN, PERSONAL AND
3 BUSINESS.

4 Q. RIGHT. SPECIFICALLY -- AND LET'S DISCUSS NOW
5 THE APPEAL. YOU SENT ME A REQUEST TO WITHDRAW THE
6 APPEAL ON OCTOBER 15TH. DO YOU REMEMBER THAT?

7 A. YES, I DO.

8 Q. WHAT WAS YOUR REASONING FOR SENDING THAT
9 REQUEST?

10 A. BECAUSE AFTER EVERYTHING THAT HAD HAPPENED,
11 JOSH, AND AFTER THE SECOND THAT YOU LIED TO ME TELLING
12 ME THAT I WAS ON THAT CONVERSATION WHEN I WAS NOT, YOU
13 NEVER TOLD US THAT WE WERE RESPONSIBLE FOR ANOTHER
14 \$7,000. WE SAT DOWN, EMIL AND I, WHEN WE HAD A MOMENT
15 AND WE DISCUSSED IT, AND WE DECIDED AFTER LOOKING
16 THROUGH EVERYTHING, HAVE EVERYTHING UNFOLDED, WE DECIDED
17 TO MOVE IN A DIFFERENT DIRECTION.

18 Q. DID YOU MOVE -- HAVE THAT DECISION AFTER YOU
19 SPOKE WITH MR. GINZBURG?

20 A. MR. GINZBURG HAD NO INPUT ON US FIRING YOU OR
21 NOT. WE DECIDED INDIVIDUALLY THAT -- WE DECIDED TO LET
22 YOU GO.

23 Q. DID YOU EVER ACTUALLY FIRE ME?

24 A. YES, I DID, JOSH.

25 Q. WHEN DID YOU SEND IT IN WRITING? WHEN DID YOU

1 CALL? WHEN DID YOU ACTUALLY SAY YOU ARE FIRED, GET OFF
2 THE CASE?

3 A. WELL, I THINK WHEN I TOLD YOU TO WITHDRAW THE
4 APPEAL, THAT MEANS ME FIRING YOU. IF THERE IS NO MORE
5 APPEAL, THERE IS NO MORE CASE.

6 Q. OKAY. SO IT WAS YOUR UNDERSTANDING -- WHAT WAS
7 YOUR BASIS FOR -- OKAY.

8 A. I APOLOGIZE, BUT I'M NOT AN ATTORNEY LIKE YOU
9 GUYS ARE. I DO THINGS A CERTAIN WAY. MY THING WAS
10 ASKING YOU TO RETRACT SOMETHING, MEANS THAT THIS IS
11 OVER. I DON'T KNOW HOW YOU UNDERSTOOD IT, BUT THAT IS
12 MY INTERPRETATION.

13 Q. WELL, OKAY. I UNDERSTOOD IT ASKING FOR ME TO
14 WITHDRAW.

15 THE COURT: MR. THOMAS, THIS IS NOT THE
16 TIME FOR YOU TO TESTIFY. ASK QUESTIONS.

17 MR. THOMAS: I WAS GOING TO BE LEADING IN
18 ANOTHER QUESTION, YOUR HONOR. I APOLOGIZE. IT WAS VERY
19 SHORT.

20 BY MR. THOMAS:

21 Q. JUST TO BE CLEAR, MR. SHARGEL, I UNDERSTAND THAT
22 IS WHAT YOU THOUGHT YOU MEANT WITH THE WITHDRAWAL. DID
23 YOU EVER RECEIVE -- SEND ME ANYTHING IN WRITING, A TEXT,
24 A CALL, ANYTHING THAT SPECIFICALLY SAID, YOU ARE
25 DISMISSED FROM THIS CASE OR YOU ARE FIRED?

1 A. I ACTUALLY WAS TOLD BY MR. GINZBURG NOT TO
2 COMMUNICATE WITH YOU BECAUSE MR. GINZBURG ASKED YOU FOR
3 YOUR MALPRACTICE INSURANCE, AND YOU SAID THAT -- YOU
4 KNOW, YOU SHOULD CEASE ALL COMMUNICATION WITH JOSH, AND
5 THAT IS WHAT I DID.

6 Q. DID YOU ASK MR. GINZBURG TO FIRE ME?

7 A. I DON'T BELIEVE MR. GINZBURG DID FIRE YOU. WE
8 NEVER HAD A CONVERSATION ABOUT MR. GINZBURG FIRING YOU.

9 MR. THOMAS: HEY, MR. GINZBURG, PLEASE,
10 YOU KNOW, LET HIM ANSWER WITHOUT COACHING.

11 BY MR. THOMAS:

12 Q. IN REGARDS TO THE CONVERSATION YOU HAD WITH
13 MR. GINZBURG --

14 A. NOBODY IS COACHING ME, JOSH. I APOLOGIZE. I'M
15 TALKING TO YOU.

16 Q. IN REGARDS TO THE CONVERSATION WITH MR. GINZBURG
17 AND MYSELF, DID YOU ACTUALLY HEAR -- WERE YOU PART OF
18 THAT CONVERSATION?

19 A. I WAS NEVER PART OF THE CONVERSATION, BUT I DID
20 RECEIVE AN E-MAIL FROM MR. GINZBURG TO YOU STATING AS
21 PART OF OUR CONVERSATION, JOSH, HERE IS THE LETTER
22 REQUESTING CERTAIN THINGS FROM YOU AND THAT YOU NEVER
23 RESPONDED TO.

24 Q. WAS I ON THAT E-MAIL?

25 A. OF COURSE YOU WERE.

1 Q. NO, I WASN'T.

2 THE COURT: AGAIN, MR. THOMAS. I'M NOT
3 GOING TO ASK YOU AGAIN. THIS IS NOT YOUR TIME TO
4 TESTIFY. AND IT IS NOT YOUR TIME TO EDITORIALIZE.

5 MR. THOMAS: I UNDERSTAND. IF I MAY, I
6 WOULD LIKE TO ACTUALLY PULL THE E-MAIL UP TO SHOW THAT I
7 WAS NOT PART OF THAT E-MAIL.

8 THE COURT: YOU CAN ASK HIM WHATEVER YOU
9 WANT. I JUST DON'T WANT YOU ARGUING WITH HIM. I DON'T
10 WANT YOU OFFERING NARRATIVE. YOU WILL HAVE AN
11 OPPORTUNITY TO TESTIFY IF YOU WANT TO DO THAT. IT IS
12 NOT APPROPRIATE FOR YOU TO DO IT IN THE COURSE OF
13 EXAMINATION.

14 MR. THOMAS: I UNDERSTAND. I APOLOGIZE,
15 HONOR.

16 BY MR. THOMAS:

17 Q. MR. SHARGEL -- IN REGARDS TO THAT E-MAIL, IF I
18 STATED TO YOU THAT I WAS NOT ACTUALLY PART OF THAT
19 E-MAIL, THAT IT WAS ONLY SENT TO YOU AND MR. YASHAYEV,
20 IS THAT FAIR TO SAY?

21 A. NO. NO, JOSH, BECAUSE I DON'T KNOW WHO
22 MR. GINZBURG SENDS E-MAILS TO WHEN HE DOES NOT SEND IT
23 TO ME. I DON'T LOOK AT HIS E-MAIL LIST.

24 Q. HE SENT IT TO YOU. IF YOU LOOK AT THE E-MAIL --

25 A. HE SENT IT TO ME TO LOOK AT. HE SENT US A COPY

1 CONFUSED. I DON'T KNOW WHAT WE ARE DOING. I ASKED YOU
2 TO SEND ME THE EXHIBITS IN ADVANCE SO THAT WE WOULD NOT
3 HAVE TECHNICAL PROBLEMS. YOU DON'T SEEM TO HAVE DONE
4 THAT.

5 I AM A LITTLE PUZZLED AS TO WHAT EXACTLY
6 WE ARE COVERING NOW. WHAT E-MAIL IS IT THAT YOU WANT TO
7 COVER WITH HIM?

8 MR. THOMAS: SO I REFERENCED ALL
9 CERTIFICATIONS AND ALL PLEADINGS WHEN I STATED
10 EVERYTHING THAT WAS ATTACHED. I JUST LITERALLY HAVE TO
11 PRINT OUT AND SEND EVERYTHING THAT WAS ATTACHED
12 PREVIOUSLY OR FILED PREVIOUSLY.

13 WHAT I'M REFERENCING NOW IS AN E-MAIL
14 THAT WAS SENT TO MR. SHARGEL, MR. JACOVETTI AND THEN I
15 BELIEVE IT WAS ACTUALLY MR. YASHAYEV THAT WAS PART OF
16 THE CHAIN THAT ACTUALLY INCLUDED ALL OF THE DOCUMENTS
17 THAT WERE SUBMITTED THAT WERE REQUIRED BY THE COURT
18 ORDER.

19 THE COURT: YOU ARE SAYING YOU HAVE AN
20 E-MAIL ATTACHING THE TRANSCRIPT AND MY DECISION?

21 MR. THOMAS: YES. IT WAS PART OF THE
22 CERTIFICATION THAT HAD ALREADY BEEN SUBMITTED BACK IN
23 MAY.

24 THE COURT: IT WAS NOT PART OF THE
25 CERTIFICATION THAT YOU SUBMITTED TO THE COURT BECAUSE

1 I'VE LOOKED AT THE CERTIFICATION THAT YOU SUBMITTED TO
2 THE COURT, MR. THOMAS.

3 MR. THOMAS: YOUR HONOR, WITH ALL DUE
4 RESPECT, IT WAS MAY 18TH. IT'S PAGE 11. IT'S EXHIBIT
5 C. THAT WAS PART OF THAT CERTIFICATION.

6 THE COURT: CERTIFICATION IS EXHIBIT D, I
7 THOUGHT, RIGHT?

8 MR. THOMAS: THE CERTIFICATION, IT IS MAY
9 18TH OF THE 2020 CASE. IT'S MAY 18TH, AND IT
10 SPECIFICALLY INCLUDES THE E-MAIL THAT SHOWS WHEN THEY
11 WERE ALL SENT THAT INFORMATION BACK ON APRIL 20TH, THAT
12 INCLUDES THE FIVE ATTACHMENTS, THE SAME FIVE ATTACHMENTS
13 YOU REFERRED TO IN -- EVERY SINGLE TIME THOSE WERE
14 REFERRED TO.

15 THE COURT: SO YOU ARE LOOKING AT -- I
16 DON'T THINK WE NEED TO SEND ANYTHING OUT BECAUSE
17 EVERYBODY CAN PULL THE DOCKET. IT IS PUBLIC RECORD.
18 YOU ARE LOOKING AT DOCUMENT 43, PAGE 11 OF -- DOCUMENT
19 ECF 43 IN 20-163, IS THAT RIGHT?

20 MR. THOMAS: CORRECT, YOUR HONOR.

21 THE COURT: SO MR. ARTOM-GINZBURG, ARE
22 YOU ABLE TO PULL THAT UP AND SHOW IT TO MR. SHARGEL?

23 MR. ARTOM-GINZBURG: I'M LOGGING INTO
24 PACER NOW.

25 MR. THOMAS: AGAIN, I HAVE THE FULL CITE

1 AND CAN SEND IT OUT, IF THAT WOULD BE EASIER FOR
2 EVERYBODY.

3 THE COURT: NO. I WANT TO AVOID
4 ADDITIONAL E-MAILS. WE DON'T NEED THAT AS AN EXHIBIT.
5 IT'S ALREADY ON THE RECORD.

6 MR. THOMAS: AGAIN, IT'S THE LAST THING
7 I'M GOING THROUGH WITH MR. SHARGEL. ACTUALLY, THE
8 SECOND TO LAST THING.

9 IF YOUR HONOR WOULD LIKE, I CAN GO
10 THROUGH FINAL -- THE OTHER SET OF QUESTIONS AND THEN GO
11 TO THIS OR JUST WAIT FOR THIS.

12 THE COURT: I MEAN I DON'T THINK IT WILL
13 TAKE MR. ARTOM-GINZBURG LONG TO GET TO IT.

14 MR. THOMAS: I WILL DO THE FINAL AFTER.

15 MR. ARTOM-GINZBURG: I'M SORRY. IT IS
16 20-CV-163?

17 THE COURT: YES, 20-CV-163, AND IT'S
18 DOCUMENT NUMBER 43, MR. ARTOM-GINZBURG.

19 MR. THOMAS: THAT IS PAGE 11.

20 MR. REO: JUST SO I'M CLEAR ON EXACTLY
21 WHAT WE'RE LOOKING AT, WE ARE ON THE ORDER THAT
22 DEFENDANT FCS CAPITAL SHALL FILE A CORPORATE DISCLOSURE
23 STATEMENT?

24 THE COURT: NO. DOCUMENT 43, MR. REO IS
25 THE RESPONSE TO THE SANCTIONS ORDER.

1 MR. REO: THIS IS THE SHELTON VS FCS
2 CASE. OKAY. I SEE IT.

3 MR. THOMAS: YOUR HONOR, IT'S THEIR
4 OPPOSITION OF A MOTION TO DISQUALIFY ACTUALLY, TO BE
5 CLEAR.

6 MR. SHARGEL: NO, I'VE NEVER SEEN THIS.

7 THE COURT: MR. SHARGEL, JUST HOLD ON.

8 YOU HAVE IT IN FRONT OF YOU NOW,

9 MR. SHARGEL?

10 MR. SHARGEL: YES, SIR, I DO.

11 THE COURT: MR. THOMAS, YOU CAN INQUIRE
12 ABOUT IT. GO AHEAD.

13 BY MR. THOMAS:

14 Q. I MEAN YOU PARTIALLY KIND OF ANSWERED ALREADY,
15 BUT DID YOU RECEIVE THIS E-MAIL, MR. SHARGEL?

16 A. NO, I'VE NEVER SEEN THIS E-MAIL BEFORE.

17 Q. I INTENTIONALLY IN THIS CASE REDACTED YOUR
18 INFORMATION SO THAT WAY IT WOULD NOT BE PART OF THE
19 PUBLIC RECORD, BUT DO YOU REMEMBER THERE WAS A CHAIN
20 WITH THOSE E-MAILS THAT STARTED WITH THAT AND THEN
21 ACTUALLY LED INTO OUR PHONE CALL ON APRIL 22ND. THERE'S
22 ACTUALLY A FEW E-MAILS ON THAT MATTER. THE NEXT ONE
23 WAS -- IT ALSO INCLUDED THE TWO PHONE CALLS THAT WERE
24 DATED -- THE ONE CREDIT REPORT, AND THEN I WOULD PUT A
25 LIEN ON YOUR HOUSE, EDITED. DID YOU RECEIVE THOSE AND

1 THEN RECEIVE THE PRINTOUT WITH THE NUMBER OF CASES, ALL
2 THE OTHER FILERS? DO YOU REMEMBER RECEIVING THAT?

3 THE COURT: MR. THOMAS, WHAT ARE WE
4 TALKING ABOUT HERE? I MEAN, GIVE US SOME CONTEXT SO WE
5 ALL KNOW WHAT WE ARE LOOKING AT.

6 MR. THOMAS: IT'S ALL A CHAIN OF E-MAILS.

7 THE COURT: IS IT SOMETHING THAT IS
8 BEFORE THE COURT?

9 MR. THOMAS: I'M LOOKING. GIVE ME ONE
10 SECOND. I BELIEVE IT IS.

11 BY MR. THOMAS:

12 Q. LOOK AT PAGE 56 AGAIN.

13 A. ON WHICH PART?

14 Q. THE ONE THAT I SENT OUT, THE COMBINED ONE.

15 A. BEAR WITH ME A MOMENT.

16 THIS IS WHERE YOU ASKED ME FOR THE
17 CERTIFICATION.

18 Q. RIGHT. DO YOU REMEMBER RECEIVING A CHAIN OF
19 E-MAILS THAT WERE PART OF THAT CHAIN?

20 A. NO, I DON'T. I REMEMBER RECEIVING THIS E-MAIL,
21 AND THEN I RECEIVED ONE MORE E-MAIL FROM YOU WITH THE
22 LIST OF OTHER PEOPLE THAT HAVE MULTIPLE CASES OPEN.

23 Q. DO YOU REMEMBER RECEIVING ANY OTHER RECORDINGS?

24 A. IN SEPTEMBER OF THIS YEAR, YOU SENT ME OTHER
25 RECORDINGS.

1 Q. THE ONES IN APRIL?

2 A. I NEVER RECEIVED ANY RECORDINGS IN APRIL, JOSH.

3 Q. OKAY. YOU DO REMEMBER RECEIVING THAT LIST OF
4 NAMES, CORRECT?

5 A. YES. YOU SENT ME A LIST OF NAMES. THEN YOU
6 SENT ME ALSO THE CERTIFICATION FOR ME TO SIGN, WHICH WE
7 SIGNED AND PROMPTLY GOT BACK TO YOU.

8 Q. OKAY.

9 IN REGARDS TO -- ONE SECOND.

10 MR. SILVESTRO: YOUR HONOR --

11 THE COURT: YES.

12 MR. SILVESTRO: JUST TO MAKE SURE THAT
13 I'M CLEAR, WE ARE ON DOCUMENT NUMBER 453, PAGE 56?

14 THE COURT: NO. WE ARE NOW ON PAGE 56 OF
15 MR. SHELTON -- I'M SORRY, MR. THOMAS'S PDF THAT HE
16 SUBMITTED.

17 MR. THOMAS: THIS PART IS PAGE 53 OF THE
18 PDF, AND THEN IT'S THE LAST PART.

19 THE WITNESS: WHAT PAGE DO YOU WANT ME TO
20 GO TO, JOSH? I APOLOGIZE.

21 BY MR. THOMAS:

22 Q. 53, MR. SHARGEL.

23 A. YES. ON OCTOBER 4TH: PLEASE SEND ME OVER THE
24 DOCUMENTS ASAP SO I CAN SUBMIT THEM TOMORROW. THANK
25 YOU.

1 YOU ASKED US TO SUBMIT -- I REMEMBER THAT
2 E-MAIL. YOU ASKED US TO SUBMIT MORE INFORMATION FOR
3 DISCOVERY AND WE -- AT THAT TIME WE WERE NOT
4 COMMUNICATING. WE DID SUBMIT THAT DISCOVERY, BUT
5 THROUGH MR. GINZBURG.

6 Q. DO YOU SEE -- SAME PAGE, BELOW THAT ONE, OCTOBER
7 2ND?

8 A. YES. AFTER I SPOKE TO YOU IN THE MORNING, I DID
9 NOT WANT TO SPEAK TO YOU IN THE AFTERNOON AFTER
10 MR. GINZBURG TOLD ME THAT I WAS FINED ANOTHER \$7,000
11 THAT YOU NEVER TOLD ME ABOUT IN THE MORNING.

12 Q. DID I CALL YOU IN THE MORNING?

13 A. YES, YOU DID. I BELIEVE YOU CALLED ME. I'LL
14 TELL YOU RIGHT NOW WHAT TIME IT WAS. GIVE ME ONE
15 SECOND. I WILL TELL YOU RIGHT NOW EXACTLY WHAT TIME IT
16 WAS THAT YOU AND I SPOKE ON OCTOBER 2ND. YOU SENT ME A
17 TEXT AND THEN YOU CALLED ME AT 10:33 A.M.

18 Q. AS PART OF THAT CALL I TOLD YOU THAT -- ABOUT
19 THE HEARING, CORRECT?

20 A. NO. WHAT YOU DID TELL ME WAS, HEY, WHAT DID YOU
21 THINK? I SAID, JOSH, I WAS NOT PART OF THE HEARING.
22 DID YOU HAVE THE HEARING? YOU SAID: YES, I COULD HAVE
23 SWORN YOU WERE ON IT. I SAID I WAS NOT. YOU SAID:
24 OKAY, WE WILL TALK SOON. I SAID: OKAY.

25 THAT IS WHEN I CALLED MR. GINZBURG, LATER

1 ON, AND MR. GINZBURG NOTIFIED ME OF WHAT HAPPENED AT
2 THAT HEARING. HE TOLD ME EXACTLY WHAT HAPPENED.

3 Q. MR. SHARGEL, DID YOU ACTUALLY CUT ME OFF ON THAT
4 PHONE CALL AT THE END OF THE CALL?

5 A. NO, I DID NOT, JOSH, BECAUSE I DON'T HAVE ANY
6 OTHER CALLS AFTER THAT ON THAT DAY.

7 Q. WERE YOU MEETING WITH MR. GINZBURG THAT DAY?

8 A. I SPOKE TO MR. GINZBURG LATER ON IN THAT DAY.

9 Q. OKAY.

10 MR. THOMAS: I HAVE NO FURTHER QUESTIONS
11 AT THIS TIME, YOUR HONOR.

12 THE COURT: I WANT TO WRAP UP WITH
13 MR. SHARGEL AND THEN I WANT TO TAKE A SHORT BREAK SO
14 THAT WE CAN HAVE SOME LUNCH.

15 MR. ARTOM-GINZBURG, DO YOU HAVE ANY
16 FOLLOW-UP?

17 MR. ARTOM-GINZBURG: NO, YOUR HONOR.

18 THE COURT: MR. REO?

19 MR. REO: I HAVE APPROXIMATELY 25
20 QUESTIONS THAT I HAVE PREPARED, SO IF WE ARE GOING TO
21 LUNCH, WE MIGHT WANT TO --

22 THE COURT: NO. WE ARE GOING TO DO IT,
23 BUT YOU ARE GOING TO BE FAST AND I WANT IT TO BE
24 FOCUSED. THIS IS DRAGGING ON. I DON'T NEED TO REPEAT
25 STUFF THAT HAS ALREADY BEEN COVERED.

1 MR. REO: I CAN PROBABLY CHOP OUT A THIRD
2 OF THESE QUESTIONS EASILY.

3 RE-CROSS EXAMINATION

4 BY MR. REO:

5 Q. I WOULD JUST LIKE TO ASK MR. SHARGEL, DO YOU
6 KNOW THE DIFFERENCE BETWEEN DISPOSITIVE AND
7 NONDISPOSITIVE MOTION?

8 A. NO, I DO NOT, SIR.

9 THE COURT: MR. REO, I JUST WANT TO PUT
10 YOU ON MY SCREEN. MY SCREEN WENT BLACK. NOW I CAN SEE
11 YOU. GO AHEAD.

12 BY MR. REO:

13 Q. DID MR. THOMAS EVER EXPLAIN IN DECEMBER OF 2019
14 OR JANUARY OF 2020 THAT HE WAS SEEKING RECONSIDERATION
15 PER FEDERAL RULE 59(E) FOR RECONSIDERATION OF A JUDGMENT
16 THAT WAS A FINAL APPEALABLE ORDER?

17 A. NO, SIR. I DON'T EVEN KNOW WHAT THAT MEANS, TO
18 BE HONEST WITH YOU, WHAT YOU JUST SAID.

19 Q. SO FROM YOUR PERSPECTIVE IT COULD HAVE JUST BEEN
20 A DISCOVERY MOTION OR SOME MOTION IN THE PROCEEDING THAT
21 DID NOT DETERMINE THE OUTCOME OF THE CASE? AS FAR AS
22 YOU KNEW, THE CASE WAS STILL GOING ON.

23 A. YES, SIR.

24 Q. NOW, JUDGMENT WAS ENTERED AGAINST YOU ON
25 DECEMBER 11, 2019. THE MOTION FOR RECONSIDERATION WAS

1 FILED ON JANUARY 27, 2020.

2 DURING THIS TIME, DID MR. THOMAS EVER
3 EXPLAIN TO YOU THAT YOU HAD TO MOVE FOR RECONSIDERATION,
4 THAT YOU EITHER HAD TO DO THIS OR APPEAL?

5 DID HE EVER EXPLAIN THAT A JUDGMENT HAD
6 BEEN ENTERED AGAINST YOU?

7 A. NO, SIR.

8 THE COURT: MR. REO, WE HAVE COVERED A
9 LOT OF THIS ALREADY, SO IF YOU ARE ASKING THIS -- IT
10 NEEDS TO BE NEW AND RESPONSIVE. I DON'T NEED TO REFLOW
11 THINGS THAT I HAVE HEARD.

12 MR. REO: YES, YOUR HONOR. I WILL MOVE
13 ALONG.

14 BY MR. REO:

15 Q. DID JOSHUA THOMAS EVER TELL YOU THAT HE WANTED
16 TO FILE AN APPEAL FROM THE DENIAL OF AN UNTIMELY MOTION
17 FOR RECONSIDERATION FOR THE PURPOSE OF SLOWING DOWN THE
18 PROCEEDINGS AND TO KEEP THE FIGHT GOING?

19 A. CAN YOU REPEAT THAT AGAIN. I APOLOGIZE.

20 Q. LET ME REPHRASE.

21 IN THE E-MAIL, JUNE 19, 2020, HE INFORMED
22 YOU THAT HE HAD A STRATEGY TO CAUSE DELAY.

23 THE COURT: MR. REO, I NEED YOU TO POINT
24 ME TO A PAGE IN AN EXHIBIT SO WE ARE ALL LOOKING AT
25 SOMETHING. I NEED A CLEAN RECORD FROM ALL OF YOU.

1 MR. REO: I BELIEVE IT WAS ON

2 MR. THOMAS'S EXHIBIT 9. I WANT TO SAY IT WAS --

3 THE COURT: PAGE 9?

4 MR. REO: EXHIBIT 9 I BELIEVE IS WHAT IT
5 WAS. IT WAS ON PAGE 41.

6 THE COURT: EXHIBIT 9, THAT IS ALREADY
7 IN, AND IT IS PAGE 41.

8 MR. REO: IT'S A COMBINED SHELTON
9 DISCOVERY COMPLETE REDUCED PDF.

10 BY MR. REO:

11 Q. HE ADVISES YOU THAT HE WANTS TO SLOW EVERYTHING
12 DOWN AND KEEP THE FIGHT GOING WITH BLANKET OBJECTIONS
13 AND THAT HE WANTS TO DO AN APPEAL.

14 SO THAT WAS BASICALLY WHAT HE TOLD YOU
15 THE APPEAL WAS GOING TO DO, TO SLOW THINGS DOWN, IS THAT
16 CORRECT?

17 MR. THOMAS: OBJECTION, THAT IS A
18 MISREPRESENTATION OF THE DOCUMENTS, AND THAT IS A
19 COMPLETE MISREPRESENTATION.

20 THE COURT: IT'S A QUESTION AND I WILL
21 LET MR. SHARGEL TESTIFY. I CAN READ THE DOCUMENT TOO.
22 SO IT IS OVERRULED.

23 MR. SHARGEL: MR. REO, I APOLOGIZE, I
24 JUST DON'T UNDERSTAND THE QUESTION. IF YOU CAN REPHRASE
25 IT ONE MORE TIME.

1 BY MR. REO:

2 Q. WAS IT YOUR UNDERSTANDING THAT THE PURPOSE OF
3 THE APPEAL WAS TO APPEAL A JUDGMENT FOR \$54,000 OR WAS
4 IT --

5 A. IT WAS NOT A JUDGMENT. I APOLOGIZE. IT WAS NOT
6 FOR A JUDGEMENT. I THOUGHT IT WAS SOME REGULAR
7 PROCEEDING THAT IS GOING ON IN THE CASE.

8 Q. SO A DISCOVERY DISPUTE PERHAPS.

9 A. EXACTLY. WHATEVER TERMINOLOGY YOU GUYS USE.

10 Q. AND MR. THOMAS SAID THAT HE WANTED TO SLOW
11 THINGS DOWN AND KEEP THE FIGHT GOING.

12 A. YES. HE WANTED TO KEEP YOU AND MR. SHELTON AT
13 BAY WHILE WE KEEP THE FIGHT GOING.

14 Q. NOW, DO YOU KNOW WHAT A PRELIMINARY INJUNCTION
15 IS?

16 A. NO, SIR, I DO NOT.

17 Q. DID MR. THOMAS EVER AT ANY TIME EXPLAIN IT TO
18 YOU?

19 A. NO, HE DID NOT.

20 Q. DID HE EVER EXPLAIN THAT A PRELIMINARY
21 INJUNCTION COULD NOT BE GRANTED FOR A PARTY THAT HAD
22 ALREADY LOST THE CASE ON THE MERITS?

23 A. I DID NOT EVEN KNOW WE LOST THE CASE AT THAT
24 TIME, IF YOU ARE STILL SPEAKING ABOUT JULY -- I'M SORRY.

25 Q. JUNE 2020.

1 A. YEAH. I DID NOT EVEN KNOW THAT WE LOST THE CASE
2 AT THAT TIME.

3 Q. ALL RIGHT.

4 NOW, THIS IS A BIT -- YOU DON'T HAVE TO
5 ANSWER IF YOU CHOOSE NOT TO, BUT IS JOSHUA THOMAS STILL
6 BILLING YOU FOR LEGAL SERVICES?

7 A. NO. I HAVE NOT PAID JOSH THOMAS FOR LEGAL
8 SERVICES IN A BIT. EVER SINCE -- I DON'T KNOW EXACTLY.
9 NO.

10 Q. WHEN IS THE LAST TIME JOSHUA THOMAS SENT YOU AN
11 INVOICE DETAILING SERVICES AND CHARGES OR A BILL
12 REQUESTING PAYMENT?

13 A. HE HAS NEVER SENT ME ANYTHING DETAILING
14 SERVICES. HE'S NEVER SENT ME A BILL. HE WOULD JUST
15 CALL ME AND SAY ME TO RUN A CREDIT CARD.

16 Q. NOW, FROM YOUR POINT OF VIEW, YOU FIRED JOSH
17 THOMAS. HE IS TERMINATED. HE NO LONGER REPRESENTS YOU.

18 A. 100 PERCENT.

19 Q. SO IF YOU HAD A CONTRACTOR BUILDING A PATIO DECK
20 AND YOU TOLD THEM, WE ARE DONE, STOP WORKING --

21 THE COURT: MR. REO, I UNDERSTAND WHAT A
22 CONTRACT IS AND HOW IT WORKS. OKAY?

23 MR. REO: SORRY, YOUR HONOR.

24 BY MR. REO:

25 Q. HAVE YOU EVER ASKED JOSHUA THOMAS FOR A REFUND

1 OF MONEY PAID FOR THE WORK HE HAD DONE THUS FAR IN THIS
2 MATTER?

3 A. I HAVE NOT ASKED HIM FOR A REFUND AS OF YET, NO.

4 Q. HAS HE EVER OFFERED YOU A REFUND?

5 A. NEVER HAS OFFERED ME A REFUND.

6 Q. DID MR. THOMAS ADVISE YOU AT ANY POINT AFTER THE
7 APPEAL WAS FILED THAT MR. SHELTON AND I INFORMED HIM
8 THAT IF THE APPEAL WAS NOT DISMISSED, WE WOULD SEEK
9 APPELLATE SANCTIONS UNDER RULE OF APPELLATE PROCEDURE 38
10 FOR FRIVOLOUS APPEAL?

11 MR. THOMAS: YOUR HONOR, I OBJECT TO THAT
12 ENTIRE LINE OF QUESTIONING. THIS IS WAY OUTSIDE OF THE
13 ACTUAL SCOPE OF WHAT HAS ALREADY BEEN DISCUSSED.

14 THE COURT: YES, SUSTAINED.

15 MR. REO, KEEP IT RELEVANT TO WHAT WE ARE
16 COVERING.

17 BY MR. REO:

18 Q. THIS WILL BE MY FINAL QUESTION. WHEN DID YOU
19 INSTRUCT JOSHUA THOMAS TO DISMISS THE APPEAL?

20 A. I BELIEVE ON THE 15TH OF OCTOBER, IF I'M NOT
21 MISTAKEN.

22 MR. REO: NOTHING FURTHER. THANK YOU,
23 SIR.

24 THE COURT: MR. SILVESTRO, DO YOU HAVE
25 ANY FOLLOW-UP?

1 MR. SILVESTRO: NO, YOUR HONOR.

2 THE COURT: MR. SHARGEL, YOU ARE
3 DISMISSED. THANKS FOR YOUR TIME.

4 MR. SHARGEL: THANK YOU, YOUR HONOR.

5 (WITNESS EXCUSED.)

6 THE COURT: WE ARE GOING TO TAKE -- I
7 WANT TO GIVE EVERYBODY A CHANCE TO TAKE A BREAK. I
8 THINK PEOPLE PROBABLY WANT TO STRETCH THEIR LEGS AND EAT
9 SOMETHING, BUT I ALSO WANT TO KEEP THIS MOVING AND GET
10 THIS DONE. HOPEFULLY WHAT WE HAVE LEFT, PARTICULARLY
11 MR. JACOVETTI'S TESTIMONY, WILL BE RELATIVELY FOCUSED,
12 AND THEN WE WILL HEAR FROM MR. THOMAS AS WELL. SO LET'S
13 TAKE A BREAK. I HAVE 1:35. I WOULD LIKE TO KEEP IT TO
14 20 MINUTES. LET'S BE BACK AT FIVE MINUTES TO 2. OKAY?

15 ALL COUNSEL: THANK YOU, YOUR HONOR.

16 (LUNCHEON BREAK TAKEN.)

17 THE COURT: ALL RIGHT. DO WE HAVE
18 EVERYBODY BACK? MR. REO, MR. THOMAS. MS. WHITE IN BACK
19 WAVING AT ME. I THINK I JUST NEED MR. SILVESTRO.

20 MR. SILVESTRO: I APOLOGIZE, YOUR HONOR.
21 I PROMISE YOU THAT WE WILL BE QUITE FOCUSED.

22 THE COURT: OKAY. GREAT.

23 SO BACK ON THE RECORD, AND I THINK WHAT
24 WE WILL DO NEXT IS WE WILL HEAR FROM MR. JACOVETTI.

25 I ASSUME, MR. SILVESTRO, YOU WILL PUT

1 MR. JACOVETTI ON, AND THEN I WILL GIVE
2 MR. ARTOM-GINZBURG AND MR. REO A CHANCE TO ASK WHATEVER
3 QUESTIONS THEY HAVE. I MAY HAVE A COUPLE OF QUESTIONS,
4 I DON'T KNOW YET, AND THEN WE WILL -- I WILL LET
5 MR. THOMAS CROSS.

6 MR. JACOVETTI, I'M JUST GOING TO ASK YOU
7 TO TALK TO MS. BUENZLE SO SHE CAN SWEAR YOU IN.

8 (ROBERT JACOVETTI, DEFENSE WITNESS,
9 SWORN.)

10 THE CLERK: WILL YOU STATE YOUR NAME FOR
11 THE RECORD.

12 THE WITNESS: ROBERT C. JACOVETTI,
13 J-A-C-O-V-E-T-T-I.

14 THE COURT: GO AHEAD, MR. SILVESTRO.

15 MR. SILVESTRO: THANK YOU, YOUR HONOR.

16 DIRECT EXAMINATION

17 BY MR. SILVESTRO:

18 Q. MR. JACOVETTI, AT SOME POINT IN OR AROUND
19 DECEMBER OF 2019, DID YOU HAVE SOME DISCUSSIONS WITH
20 JOSHUA THOMAS WITH REGARD TO BRINGING AN ACTION AGAINST
21 MR. JAMES SHELTON AND AN INDIVIDUAL BY THE NAME OF DAN
22 BOGER?

23 A. YES.

24 Q. AND DID YOU DISCUSS WHAT THE NATURE OF THE
25 POTENTIAL CLAIMS WERE?

1 A. YES.

2 Q. AND WHAT DID YOU INDICATE TO HIM THAT YOU WANTED
3 TO PURSUE?

4 A. SOME FORM OF DEFAMATION AND POSSIBLE CIVIL
5 CONSPIRACY.

6 Q. AND WHAT DO YOU BELIEVE WAS THE SOURCE OF THE
7 DEFAMATION?

8 A. I WAS BROUGHT INTO A LAWSUIT THAT I SHOULD NOT
9 HAVE BEEN BROUGHT INTO. I WAS THREATENED BY IT. IT WAS
10 A MATTER OF PUBLIC RECORD, AND I WAS CONCERNED ABOUT THE
11 IMPACT IT WOULD HAVE ON MY PRACTICE, MY FIRM.

12 Q. AND IS THAT THE LAWSUIT THAT WE HAVE BEEN
13 SPEAKING ABOUT HERE THAT IS, FOR LACK OF A BETTER
14 DESCRIPTION, A SISTER CASE IN THIS MATTER?

15 A. YES.

16 Q. AND DID YOU HAVE SOME CONVERSATIONS WITH
17 MR. THOMAS WITH REGARD TO WHO THE PLAINTIFFS IN YOUR
18 MATTER WOULD BE?

19 A. I DID.

20 Q. AND DID THOSE DISCUSSIONS INCLUDE BARRY SHARGEL
21 AND EMIL YASHAYEV?

22 A. TO THE EXTENT THAT I DID NOT WANT THEM INCLUDED
23 IN THE ACTION, YES.

24 Q. AND DID YOU SPECIFICALLY TELL MR. THOMAS THAT
25 YOU DID NOT WANT THEM TO BE IN THE ACTION?

1 A. NUMEROUS TIMES.

2 Q. AND WHAT WAS THE BASIS FOR YOUR CONCERN ABOUT
3 THEM BEING PLAINTIFFS IN YOUR ACTION?

4 A. I WAS AWARE THAT THERE WAS A PENDING ACTION. I
5 WAS CONCERNED ABOUT THAT THE ACTION WAS STILL ONGOING AT
6 THAT POINT TO MY KNOWLEDGE, AND CONCURRENT CLAIMS OR
7 POSSIBILITY OF CONCURRENT CLAIMS.

8 Q. DID YOU HAVE SOME DISCUSSIONS WITH BOTH THESE
9 INDIVIDUALS, MR. SHARGEL AND MR. YASHAYEV, ABOUT JOSH
10 INCLUDING THEM IN THE CASE?

11 A. I HAD DISCUSSIONS WITH BARRY AND EMIL THAT I WAS
12 CONSIDERING BRINGING AN ACTION. WHEN I SAW THE DRAFTS
13 THAT INCLUDED THEM, I DID INFORM JOSH THAT THEY HAVE TO
14 BE TAKEN OUT. HE DID TELL ME AT THE TIME, DON'T WORRY,
15 IT'S JUST A DRAFT. WHEN I FILE, I WILL TAKE IT OUT. I
16 DID INFORM BARRY THAT THEY WERE INCORRECTLY INCLUDED,
17 THAT THEY COULD NOT BE A PART OF THE ACTION.

18 Q. OKAY. AND DID EITHER BARRY OR EMIL EVER GIVE
19 YOU CONSENT OR THEIR AUTHORITY THAT YOU COULD MAKE
20 REPRESENTATIONS TO MR. THOMAS THAT IT WAS OKAY TO MAKE
21 THEM AS PLAINTIFFS.

22 A. NO, THEY DID NOT.

23 Q. YOU HAVE HEARD SOME DISCUSSIONS ABOUT US TALKING
24 ABOUT THE CERTIFICATION, CORRECT?

25 A. YES, I DID.

1 Q. AND IS IT FAIR TO SAY THAT YOUR SIGNATURE
2 APPEARS ON THE CERTIFICATION?

3 A. IT DOES.

4 Q. AND AS I HAVE ASKED YOUR COLLEAGUES, IT
5 INDICATES THAT YOU REVIEWED SOME THINGS BEFORE YOU
6 SIGNED THE CERTIFICATION, IS THAT ACCURATE?

7 A. TO THE EXTENT THAT THAT IS NOT MY INTERPRETATION
8 OF THE WORDS ON IT, YES, IT DOES USE THE WORD
9 "REVIEWED," BUT MY UNDERSTANDING WAS THAT THE REVIEW WAS
10 A SERIES OF CONVERSATIONS WE HAD WITH MR. THOMAS. I DID
11 NOT REVIEW ANY DOCUMENTS.

12 Q. WERE YOU AWARE THAT MR. THOMAS WAS UNDER SOME
13 DURESS AND WAS SOMEWHAT IN A BAD POSITION WITH REGARD TO
14 THE COURT AT THIS POINT?

15 A. I WAS AWARE THAT THERE WERE SOME ISSUE WITH
16 POSSIBLE SANCTIONS. TO THE EXTENT AND THE SEVERITY OF
17 THAT SCENARIO, NO, I WAS NOT AWARE.

18 Q. AND AS A RESULT OF THOSE DISCUSSIONS DID YOU
19 ENTERTAIN THE IDEA OF BRINGING IN OTHER -- OR ADDITIONAL
20 COUNSEL?

21 A. TO THE BEST OF MY RECOLLECTION, IT WAS DISCUSSED
22 WITH RESPECT TO A MR. WEIN -- I WILL GET THE NAME
23 INCORRECT. AND I BELIEVE JOSH -- EXCUSE ME, MR. THOMAS
24 RAISED IT AS A POSSIBLE -- POSSIBILITY TO BRING IN
25 ANOTHER ATTORNEY WHO WOULD BE BETTER SUITED TO ADVANCE

1 THE CASE AND AVOID ANY DISTRACTIONS WITH RESPECT TO HIS
2 RELATIONSHIP WITH YOUR HONOR.

3 Q. AND WAS THE PURPOSE OF BRINGING AN ADDITIONAL
4 ATTORNEY IN TO SOMEWHAT DEFLECT WHAT JOSH PERHAPS
5 CHARACTERIZED AS A PERSONALITY CONFLICT WITH THE COURT?

6 A. THAT IS MY UNDERSTANDING.

7 Q. AND DID MR. WEISBERG EVER ENTER HIS APPEARANCE
8 ON YOUR BEHALF?

9 A. NO.

10 Q. WERE YOU AWARE OF THE EXISTENCE OF A HEARING ON
11 MARCH 12TH THAT HAD TO DO WITH SANCTIONS AGAINST
12 MR. THOMAS?

13 A. I WAS NOT.

14 Q. I GUESS IT'S FAIR TO SAY THEN THAT YOU DID NOT
15 ATTEND THAT HEARING?

16 A. I DID NOT.

17 Q. WERE YOU AWARE THAT THERE WAS AN ORDER THAT WAS
18 ISSUED ON MARCH 27 OF 2020 IN WHICH IT WAS REQUIRED THAT
19 MR. THOMAS SHOW YOU SPECIFIC DOCUMENTS AND THAT WAS
20 SUPPOSED TO BE THE BASIS FOR THE CERTIFICATION?

21 A. NOT AT THAT TIME, NO.

22 Q. I'M GOING TO GO THROUGH THOSE DOCUMENTS. THERE
23 WAS AN ORDER ON MARCH 27TH OF 2020, IS AN ORDER FROM
24 THIS COURT. DID YOU EVER SEE THAT PRIOR TO SIGNING YOUR
25 CERTIFICATION?

1 A. NO. JOSH NEVER AFFIRMATIVELY TOLD ME ABOUT THAT
2 ORDER, NO.

3 Q. THERE WAS AN ACCOMPANYING MEMORANDUM THAT WENT
4 ALONG WITH THAT ORDER. DID YOU EVER SEE THAT PRIOR TO
5 SIGNING THE CERTIFICATION?

6 A. NO, I DID NOT.

7 Q. DID YOU READ A TRANSCRIPT OF THE MARCH 12TH
8 HEARING PRIOR TO SIGNING THE CERTIFICATION?

9 A. NOT AT THAT TIME.

10 Q. COLLECTIVELY, THE THREE DOCUMENTS THAT WE JUST
11 DISCUSSED, THE MARCH 27TH ORDER, THE ACCOMPANYING
12 MEMORANDUM, AND THE MARCH 12TH, 2020 TRANSCRIPT, DID YOU
13 EVER RECEIVE COPIES OF ANY OF THOSE THINGS?

14 A. NO.

15 Q. PRIOR TO -- AND LET ME JUST MAKE SURE THAT WE
16 ARE CLEAR ON THE RECORD. THE QUESTION IS SPECIFICALLY
17 WITH REGARD TO PRIOR TO SIGNING YOUR CERTIFICATION.

18 A. NO.

19 Q. THERE APPEARED TO BE SOME TESTIMONY EARLIER BY
20 MR. THOMAS, OR AT LEAST AN ATTEMPT, THAT HE SERVED YOU
21 COPIES OF THOSE ITEMS, IT APPEARS BY UPS. DID YOU EVER
22 RECEIVE THOSE DOCUMENTS VIA UPS?

23 A. NEVER.

24 Q. DID YOU EVER RECEIVE THEM ELECTRONICALLY?

25 A. NEVER.

1 MR. SILVESTRO: YOUR HONOR, I HAVE NO
2 MORE QUESTIONS.

3 THE COURT: OKAY. MR. ARTOM-GINZBURG, DO
4 YOU HAVE ANY QUESTIONS?

5 MR. ARTOM-GINZBURG: NO QUESTIONS, YOUR
6 HONOR.

7 THE COURT: MR. REO, DO YOU HAVE ANY
8 QUESTIONS?

9 MR. REO: I DO HAVE A FEW.

10 CROSS EXAMINATION

11 BY MR. REO:

12 Q. PRIOR TO THE FILING OF JACOVETTI LAW V.
13 SHELTON, DID YOU SEE A COPY OF THE PROPOSED COMPLAINT?

14 A. DID I SEE A DRAFT? YES.

15 Q. DID YOU SEE THE FINAL DRAFT PRIOR TO IT BEING
16 FILED OR DID YOU SEE A WORK-IN PROGRESS DRAFT?

17 A. I WOULD CHARACTERIZE IT AS A WORK-IN PROGRESS.

18 Q. DID IT INCLUDE MR. YASHAYEV AND MR. SHARGEL AS
19 PLAINTIFFS?

20 A. TO THE EXTENT THAT IT WAS MY UNDERSTANDING THAT
21 WHEN IT WAS GOING TO BE FILED IT WOULD BE REVISED TO
22 OMIT THEM, YES.

23 Q. SO THEY WERE INCLUDED, BUT YOU EXPECTED AND
24 COMMUNICATED TO MR. THOMAS THAT HE WAS TO REMOVE THEM
25 PRIOR TO THE FILING.

1 A. SEVERAL TIMES.

2 Q. AT ANY TIME AFTER THE FILING OF JACOVETTI LAW V.
3 SHELTON, DID YOU SEE A COPY OF THE COMPLAINT OR THE
4 AMENDED COMPLAINT THAT HAD BEEN FILED IN THE CASE?

5 A. THE AMENDED COMPLAINT, YES.

6 Q. DID YOU REQUEST THAT MR. THOMAS REMOVE
7 MR. YASHAYEV AND MR. SHARGEL AS PLAINTIFFS IN THAT
8 ACTION?

9 A. SEVERAL TIMES.

10 Q. DID HE TELL YOU-- WHAT WAS HIS RESPONSE?

11 A. DON'T WORRY, I WILL TAKE CARE OF IT, OR
12 SOMETHING TO THAT EFFECT.

13 Q. ALL RIGHT.

14 THE CERTIFICATION WITH THE SIGNATURES
15 DOES NOT BEAR A CASE CAPTION.

16 DID YOU SPECIFICALLY KNOW WHAT CASE THE
17 CERTIFICATION REFERRED TO?

18 A. AT THE TIME IT WAS MY UNDERSTANDING THAT IT WAS
19 GOING TO BE A DOCUMENT TO BE USED IN BOTH CASES, AND IT
20 WAS MISCHARACTERIZED TO ME TO THE EXTENT THAT, OH, IT'S
21 JUST REALLY TO SHOW THE COURT THAT YOU WANT ME TO
22 CONTINUE. IT'S A MINOR MATTER. IT WAS NEVER
23 AFFIRMATIVELY EXPLAINED IN ANY DEPTH WITH ANY CLARITY.

24 Q. YOU SAID YOU DID NOT RECEIVE THE TRANSCRIPTS BY
25 UPS. DID YOU RECEIVE THEM BY ANY OTHER COURIER, REGULAR

1 MAIL?

2 A. I DID NOT RECEIVE ANY TRANSCRIPTS.

3 Q. AT NO TIME DID YOU EVER GET THE 76 PAGES?

4 A. NO, I DID NOT.

5 Q. DID MR. THOMAS EVER DISCUSS THE TRANSCRIPTS WITH
6 YOU, REFERENCE THEM OR DISCLOSE THEIR EXISTENCE?

7 A. HE DID NOT.

8 Q. DID JOSHUA THOMAS INFORM YOU THAT HE HAD BEEN
9 SANCTIONED IN JACOVETTI LAW V. SHELTON?

10 A. HE RAISED IT AS AN ISSUE, THAT THERE WAS A
11 POSSIBILITY OF SANCTIONS. IT WAS NOT MY KNOWLEDGE THAT
12 HE HAD BEEN SANCTIONED, AND IT NEVER WAS DISCUSSED WITH
13 ANY CLARITY TO THE EXTENT AND THE SERIOUSNESS OF THE
14 SANCTIONS, NO.

15 Q. WHEN DID YOU FIRST LEARN THAT JOSHUA THOMAS HAD
16 BEEN SANCTIONED IN JACOVETTI LAW V. SHELTON?

17 A. ACTUALLY SANCTIONED? I DON'T HAVE A SPECIFIC
18 RECOLLECTION. I CAN'T PUT A DATE ON IT.

19 Q. OKAY.

20 A. I'M GOING TO SAY FAIRLY INTO THIS PROCEEDING,
21 FAIRLY INTO THE CASE, I WOULD SAY.

22 Q. WERE YOU AWARE THAT DEFENDANT SHELTON SOUGHT
23 RULE 11 SANCTIONS AGAINST YOU AND JOSHUA THOMAS IN
24 JACOVETTI LAW V. SHELTON?

25 A. NO, I WAS NOT.

1 MR. REO: NOTHING FURTHER.

2 THE COURT: I HAVE A COUPLE OF QUESTIONS,
3 NOT A LOT. AND THEN I'M GOING TO TURN IT OVER TO
4 MR. THOMAS.

5 BY THE COURT:

6 Q. MR. JACOVETTI, ONCE THE CASE WAS FILED, YOU AND
7 YOUR FIRM SUED MR. SHELTON. DID YOU DO ANYTHING TO
8 FOLLOW THE DOCKET?

9 A. NO, I DID NOT, YOUR HONOR. I WAS RELYING ON MY
10 ATTORNEY.

11 Q. AND WHEN YOU GOT THIS CERTIFICATION, DRAFT OF
12 THE CERTIFICATION FROM MR. THOMAS, DID YOU -- JUST TELL
13 ME A LITTLE BIT ABOUT THE DISCUSSION YOU HAD WITH HIM
14 ABOUT WHAT HAD PRECIPITATED IT.

15 A. IT WAS ALWAYS VERY SHORT CONVERSATION TO THE
16 EXTENT THAT OH, IT IS REALLY NOTHING, I HAD SOME ISSUES
17 WITH THIS PARTICULAR JUDGE IN A PRIOR CASE, AND, YOU
18 KNOW, HE DOES NOT LIKE ME AND HE JUST WANTS TO KNOW THAT
19 YOU WANT TO CONTINUE WITH ME. IT MINIMIZED --

20 Q. DID --

21 A. EXCUSE ME, YOUR HONOR, I APOLOGIZE.

22 Q. GO AHEAD.

23 A. IT WAS ALWAYS MINIMIZED. IT WAS ALWAYS MADE
24 VERY LIGHT OF, TO WHATEVER EXTENT WE DISCUSSED IT. AND
25 THERE WERE NOT A LOT OF DISCUSSIONS ABOUT IT.

1 Q. SO I KNOW YOU HAVE BEEN SITTING HERE FOR THE
2 TESTIMONY. AND RIGHT BEFORE THE BREAK, MR. THOMAS WAS
3 SHOWING US THE E-MAIL THAT IS ON THE DOCKET WHERE HE
4 ATTACHED THE VARIOUS ITEMS THAT CAME OUT OF THAT MARCH
5 HEARING. DID YOU GET THAT E-MAIL?

6 A. NO, I DID NOT.

7 Q. ALL RIGHT. THE LAST QUESTION IS, DID YOU ASK OR
8 DISCUSS WITH MR. THOMAS WHY IT WAS THAT YOU AND
9 MR. SHARGEL AND MR. YASHAYEV ALSO HAD TO BE SIGNING THE
10 SAME CERTIFICATION, IN THE CONTEXT OF YOU HAVING SAID
11 THAT YOU DID NOT WANT THEM IN THE CASE?

12 A. I WAS AWARE OF THE ISSUE WITH THE 2020 CASE AND
13 THE AMENDED COMPLAINT, BUT I WAS ALSO AWARE THAT THERE
14 WAS SOME OTHER MOTION PRACTICE GOING ON IN THE 2018
15 CASE, AND I BELIEVE, IF MY RECOLLECTION SERVES, AND IT
16 DOES, THAT IT WAS A CASUAL REPRESENTATION. I'M GOING TO
17 USE THE SAME CERTIFICATION IN BOTH FILINGS, JUST TO
18 EXPEDITE THINGS.

19 THE COURT: OKAY. ALL RIGHT.

20 MR. THOMAS, YOUR WITNESS.

21 CROSS EXAMINATION

22 BY MR. THOMAS:

23 Q. MR. JACOVETTI, DO YOU REMEMBER WHEN YOU
24 INITIALLY HIRED ME ON TO REPRESENT THE CLIENTS THAT YOU
25 AND I SPOKE REGARDING REPRESENTATION REGARDING THE

1 SHELTON VERSUS FCS MATTER?

2 A. YOU MEAN WHEN BARRY HIRED YOU?

3 Q. HOW DID THAT INITIAL CONNECTION --

4 A. I'M SORRY. YES, BACK IN 2018, YES.

5 Q. AND YOU INTRODUCED ME TO BARRY?

6 A. YES, I DID.

7 Q. SO YOU CALLED ME AND ASKED ME TO REPRESENT BARRY
8 AND EMIL -- EXCUSE ME, MR. SHARGEL AND MR. YASHAYEV ON
9 THAT MATTER AND FCS, CORRECT?

10 A. YES. AT THAT TIME I WAS A PARTY TO THAT ACTION.

11 Q. I'M NOT ASKING IF YOU'RE A PARTY TO THE ACTION.
12 I'M ASKING YOU, DO YOU SPECIFICALLY CONNECT ME WITH
13 MR. YASHAYEV AND MR. SHARGEL AND ASK ME TO REPRESENT
14 THEM IN THAT MATTER?

15 A. I DID REFER THEM TO YOU. I DID REFER YOU TO
16 THEM, RATHER. YES.

17 Q. AND SPECIFICALLY, IN REGARDS TO THAT MATTER,
18 WERE THERE EVER ANY PHONE CALLS WHERE YOU ACTUALLY
19 CALLED EITHER FROM YOUR CELL OR FROM YOUR OFFICE WHERE
20 YOU HAD ACTUALLY HAD A THREE-WAY CALL BETWEEN MYSELF AND
21 BARRY AND USUALLY MR. YASHAYEV AS WELL?

22 A. I DON'T RECALL ANY SPECIFIC CONVERSATIONS THAT I
23 ARRANGED THREE WAY. I KNOW THAT THERE WERE NUMEROUS
24 TIMES WHERE BARRY CONTACTED ME AND EXPRESSED FRUSTRATION
25 THAT HE WAS TRYING TO REACH YOU, AND THEN I WOULD --

1 ALLOW ME TO FINISH -- HE SAYS, DO ME A FAVOR, SEE IF YOU
2 CAN GET JOSH TO CALL US BACK. I WOULD REACH OUT TO YOU
3 AND SAY SOMETHING TO THE EFFECT THAT BARRY IS TRYING TO
4 REACH YOU, WHAT'S GOING ON, LET'S GET A CALL, AND YOU
5 WOULD BASICALLY RESPOND, I WILL GET AHOLD OF HIM OR I
6 WILL CALL HIM.

7 Q. IT STILL DOES NOT ANSWER THE QUESTION. WERE
8 THERE EVER A TIME WHERE YOU SPECIFICALLY SET UP A
9 THREE-WAY CALL BETWEEN MYSELF AND USUALLY MR. SHARGEL?

10 A. I DO NOT HAVE A SPECIFIC RECOLLECTION OF
11 SPECIFICALLY ARRANGING A THREE-WAY CALL. OKAY? I'M NOT
12 SAYING IT DID NOT HAPPEN NECESSARILY. IF YOU HAVE GOT
13 ANY DOCUMENTATION OF IT, I WOULD LIKE TO SEE IT, BUT THE
14 SEQUENCE OF EVENTS THAT I RECALL IS THAT THERE WERE MANY
15 TIMES, OR NUMEROUS TIMES, RATHER, WHERE BARRY WAS TRYING
16 TO REACH YOU, MR. SHARGEL WAS TRYING TO REACH YOU, HE
17 WOULD BE FRUSTRATED, CONTACT ME, GET JOSH TO CALL ME,
18 AND I WOULD REACH OUT TO YOU. SAYING I HAVE NO SPECIFIC
19 RECOLLECTION OF A CALL THAT I ARRANGED A THREE-WAY CALL.
20 IF YOU HAVE DOCUMENTATION OF IT, I WOULD LIKE TO SEE IT.

21 Q. DO YOU REMEMBER THE CALL ON APRIL 22ND?

22 A. CAN YOU REFRESH MY RECOLLECTION?

23 Q. DO YOU REMEMBER THE CALL WHERE I SPECIFICALLY
24 SPOKE WITH YOU AND WITH MR. SHARGEL, AND I BELIEVE
25 MR. YASHAYEV AS WELL, REGARDING THE HEARING AND THE FACT

1 THAT I STATED THAT WE MAY NEED TO GET ANOTHER ATTORNEY
2 INVOLVED. DO YOU REMEMBER THAT PHONE CALL?

3 A. I REMEMBER A CALL THAT WE HAD AND YOU MENTIONED
4 THAT THERE WOULD BE -- YOU THINK -- YOU SUGGESTED THAT
5 IT MIGHT BE A GOOD IDEA TO GET ANOTHER ATTORNEY TO, I
6 BELIEVE YOUR WORDS WERE, FRONT THE CASE, AS I RECALL.
7 SO I DO HAVE A RECOLLECTION OF A PHONE CALL.

8 Q. WHAT IS YOUR UNDERSTANDING OF THE TERM "FRONT
9 THE CASE" MEAN?

10 A. I DON'T KNOW. I THINK I ASKED YOU THAT QUESTION
11 AT THE TIME.

12 Q. I HAVE NEVER USED THOSE WORDS IN MY LIFE, SO I'M
13 NOT SURE EITHER.

14 THE COURT: MR. THOMAS, IF I HAVE TO WARN
15 YOU AGAIN, THEN WE ARE GOING TO TAKE MORE SEVERE ACTION.
16 I DON'T WANT YOU TO EDITORIALIZE.

17 MR. THOMAS: I UNDERSTAND, YOUR HONOR.

18 THE COURT: WELL, YOU DON'T SEEM TO
19 UNDERSTAND BECAUSE I KEEP WARNING YOU AND YOU KEEP DOING
20 IT.

21 MR. THOMAS: I UNDERSTAND, YOUR HONOR.

22 BY MR. THOMAS:

23 Q. IN REGARDS TO -- LET ME TAKE YOUR ATTENTION TO
24 AN E-MAIL THAT MIGHT BE -- GIVE ME A SECOND.

25 I CAN DIRECT YOUR ATTENTION,

1 MR. JACOVETTI, TO PAGE 273 OF THE DOCUMENTS THAT I
2 SUBMITTED.

3 A. 273. ONE SECOND. MY ATTORNEY IS GOING TO PRINT
4 IT OUT FOR ME.

5 Q. 273 AND 274 IF THEY ARE PRINTING IT.

6 THE COURT: ARE WE MARKING THIS AS AN
7 EXHIBIT?

8 MR. THOMAS: WE WILL, YES, YOUR HONOR.

9 THE COURT: IT WILL BE EXHIBIT 17?

10 MR. THOMAS: SURE.

11 MR. SILVESTRO: I BELIEVE THERE IS A 17.

12 THE COURT: THE LAST ONE I HAVE IS --

13 MR. SILVESTRO: I BELIEVE THERE IS A 17,
14 YOUR HONOR.

15 MS. BUENZLE: 17 IS PAGE 11.

16 THE COURT: I'M SORRY. THANK YOU,
17 MS. BUENZLE.

18 MR. THOMAS: EXHIBIT 18 THEN?

19 THE COURT: RIGHT. AND SO THAT'S PAGES
20 274 AND 275.

21 MR. THOMAS: 273 AND 274, YOUR HONOR.

22 THE COURT: OKAY.

23 THE WITNESS: I'M HANDED AN E-MAIL. IT
24 IS DATED MONDAY, APRIL 20TH, 2020 AT 2:04 P.M. I
25 BELIEVE IT'S A STRING. THERE IS ANOTHER E-MAIL

1 THURSDAY, MARCH 19, 2020 AT 12:49 P.M. HE IS GOING TO
2 MARK IT. LET ME READ IT.

3 BY MR. THOMAS:

4 Q. GO AHEAD.

5 A. I HAVE READ IT. LET ME FINISH READING THE
6 SECOND PAGE, PLEASE.

7 OKAY.

8 Q. DO YOU REMEMBER HAVING THOSE CONVERSATIONS?

9 A. DO I HAVE A SPECIFIC -- WELL, THIS IS AN E-MAIL.

10 Q. DO YOU REMEMBER WHEN WE -- WHEN THOSE E-MAILS
11 WERE SENT TO YOU?

12 A. I DON'T HAVE A SPECIFIC RECOLLECTION OF
13 RECEIVING IT, BUT IT'S MY E-MAIL ADDRESS.

14 Q. DO YOU REMEMBER WHY I WAS SUGGESTING THAT YOU
15 HIRE MR. LEE YOUNG AT THE TIME?

16 A. I DON'T REMEMBER HIS NAME SPECIFICALLY.
17 WHATEVER CONVERSATIONS WE HAD WITH ANOTHER ATTORNEY, MY
18 RECOLLECTION IT WAS WITH -- AND FORGIVE ME IF I GET
19 THEIR NAME WRONG -- IT'S MR. WEIN -- WEISBERG, EXCUSE
20 ME. AND I BELIEVE THE CONVERSATION WAS WITH RESPECT TO
21 THE EXTENT THAT THERE WERE DISCUSSIONS ABOUT BRINGING
22 ANOTHER ATTORNEY IN, IT WAS BECAUSE OF THE DIFFICULTY,
23 AS YOU PUT IT, AND I WILL BE KIND, THE DIFFICULTY YOU
24 WERE HAVING WITH HIS HONOR WITH RESPECT TO SANCTIONS, ET
25 CETERA. AND YOU FELT IT WOULD BE A GOOD IDEA TO HAVE

1 SOMEBODY TO TAKE OVER THE CASE, AND YOU WOULD CONTINUE
2 WORKING IN THE BACKGROUND ON IT.

3 Q. SO YOU ARE AGREEING THAT YOU KNEW THAT THERE
4 WERE ALREADY SANCTIONS AGAINST ME AT THE TIME THAT WE
5 HAD THAT CONVERSATION, IS THAT CORRECT?

6 A. I SAID THAT -- I TESTIFIED TO THAT. I WAS AWARE
7 THAT THAT THERE WAS AN ISSUE OF SANCTIONS. I BELIEVE
8 THERE WERE MOTIONS. I DON'T KNOW -- I DID NOT KNOW, NOR
9 DID YOU APPRISE ME OF -- IN A VERY AFFIRMATIVE MANNER
10 THAT THERE WAS SANCTIONS IMPOSED AND THAT -- THE
11 SEVERITY OF THEM. I KNOW THAT THERE WAS A SANCTION
12 ISSUE AND THAT YOU WERE FIGHTING THEM.

13 Q. YOU ARE TELLING ME THAT YOU DON'T REMEMBER
14 CALLING ME AROUND APRIL 20TH, ACTUALLY PRIOR TO THE CALL
15 WITH MR. SHARGEL AND MR. YASHAYEV, SPECIFICALLY ASKING
16 ABOUT THE SANCTIONS AND IF THEY WERE FOR ME OR FOR THEM?
17 YOU DON'T REMEMBER THAT CALL?

18 A. I REMEMBER THE ISSUE OF SANCTIONS THAT YOU WERE
19 HAVING IN THE 2020 CASE. OKAY? AND THEY WERE, TO MY
20 ESTIMATION, VERY MUCH DOWNPLAYED. I BELIEVE THAT YOU
21 WERE FIGHTING THEM IN YOUR -- OR SOME WORDS TO THAT
22 EFFECT, THAT THEY WERE NOT IMPOSED YET, AND I DID NOT
23 KNOW THE SEVERITY OF THEM.

24 Q. MR. JACOVETTI, YOU ARE AN ATTORNEY. YOU
25 UNDERSTAND WHEN I WAS FIGHTING --

1 A. I AM.

2 Q. YOU UNDERSTOOD WHEN I SAID I WAS FIGHTING THEM
3 THAT -- AND I TOLD YOU THAT THEY HAD ALREADY ACTUALLY
4 BEEN APPLIED, THAT WE WERE FILING A MOTION TO
5 RECONSIDER, THAT WAS MR. WEISBERG WAS FOR, CORRECT?

6 A. MR. WEISBERG, TO MY UNDERSTANDING INITIALLY, WAS
7 COMING IN TO HELP ADVANCE THIS CASE, THE DEFENSE --
8 WELL, EXCUSE ME, LET ME QUALIFY -- I BELIEVE TO ADVANCE
9 THE DEFENSE IN THE 2018 CASE. THAT IS MY UNDERSTANDING.
10 I THINK I FOUND OUT LATER THAT HE WAS REPRESENTING YOU
11 WITH RESPECT TO THE SANCTIONS.

12 Q. LOOK AT PAGE 254 OF THE DOCUMENTS THAT I
13 SUBMITTED.

14 A. OKAY. I'VE REVIEWED IT.

15 Q. DO YOU SEE WHERE THERE WAS A SPECIFIC DISCUSSION
16 WHERE I FORWARDED YOU AN E-MAIL THAT SAID FROM MR.
17 WEISBERG.

18 MR. THOMAS: AND I WOULD LIKE TO MOVE
19 THIS IN AS EVIDENCE.

20 THE COURT: LET'S MARK IT FIRST. SO IT
21 IS EXHIBIT 19, IS THAT RIGHT?

22 MR. THOMAS: YES.

23 THE COURT: THEN WHY DON'T WE LAY A
24 FOUNDATION AND ACTUALLY ASK SOME QUESTIONS ABOUT IT
25 BEFORE WE TRY TO MOVE IT INTO EVIDENCE.

1 BY MR. THOMAS:

2 Q. DO YOU KNOW WHAT THIS E-MAIL WAS?

3 A. YES.

4 Q. SO AFTER I SENT YOU THIS E-MAIL, WHAT WAS YOUR
5 UNDERSTANDING OF THE RELATIONSHIP BETWEEN MYSELF AND MR.
6 WEISBERG?

7 A. THAT HE WAS COMING IN TO TAKE OVER THE CASE TO
8 ADVANCE, I THINK MAYBE BOTH ACTIONS, POSSIBLY.

9 Q. DO YOU SEE AT THAT TIME BOTTOM OF 254 WHERE HE
10 SPECIFICALLY SAID MY REPRESENTATION IS OF YOU, JOSH
11 ONLY. DO YOU SEE THAT PARAGRAPH?

12 A. YEAH, I DO.

13 Q. AND IT SAYS: YOUR REPRESENTATION OF YOUR CLIENT
14 CONTINUING YOUR CO-COUNSEL? DO YOU REMEMBER RECEIVING
15 ANY --

16 A. I DO. I BELIEVE I WAS TRYING TO SET UP --
17 ASKING YOU TO SET UP A THREE-WAY CALL BETWEEN MYSELF,
18 YOU AND HIM, IF HE WAS GOING TO BE INCOMING COUNSEL.

19 Q. SO YOU UNDERSTOOD THAT HE HAD ALREADY RESPONDED
20 THAT HE WAS JUST REPRESENTING MYSELF IN THAT MATTER?

21 A. BECAUSE WHEN I FIND OUT, THAT THAT WAS HIS
22 LIMITED ROLE. THE ORIGINAL DISCUSSIONS THAT WE HAD WITH
23 RESPECT TO MR. WEISBERG WAS THAT HE WOULD BE COMING IN
24 AS INCOMING COUNSEL, I BELIEVE BOTH IN MY CASE AND AS
25 WELL AS IN THE 2018. I DID NOT KNOW -- I HAVE ANSWERED

1 THE QUESTION.

2 Q. IF I CAN DIRECT YOUR ATTENTION TO PAGE 276.

3 A. IS IT AN EXHIBIT YET?

4 Q. NOT YET.

5 MR. SILVESTRO: YOUR HONOR, WITH REGARD
6 TO 19, IS MR. THOMAS GOING TO MOVE TO HAVE THIS
7 ADMITTED?

8 MR. THOMAS: I WOULD LIKE TO HAVE EXHIBIT
9 19 ADMITTED, YOUR HONOR.

10 MR. SILVESTRO: OBJECTION.

11 THE COURT: ANYONE HAVE AN OBJECTION?

12 MR. SILVESTRO: YEAH, I DO.

13 THE COURT: WHAT IS YOUR OBJECTION?

14 MR. SILVESTRO: THE BASIS IS THERE IS NO
15 PROOF THAT THIS WAS EVER -- THAT THE RESPONSE FROM MR.
16 WEISBERG WAS EVER FORWARDED TO MR. JACOVETTI.

17 MR. THOMAS: YOUR HONOR, I BELIEVE THAT
18 HAS ALREADY JUST BEEN ADDRESSED.

19 THE COURT: I THINK THAT HE TESTIFIED
20 THAT HE HAS NO REASON TO THINK HE DID NOT GET THE
21 E-MAILS. I WILL OVERRULE THE OBJECTION.

22 SO WE'RE AT -- WAS IT 274?

23 MR. THOMAS: NOW 276, YOUR HONOR.

24 THE COURT: OKAY. THAT WILL BE
25 EXHIBIT 20?

1 MR. THOMAS: YES, YOUR HONOR.

2 BY MR. THOMAS:

3 Q. MR. JACOVETTI, LET ME KNOW WHEN YOU HAVE IT IN
4 FRONT OF YOU.

5 A. I'M READING IT NOW.

6 Q. IS IT FAIR TO SAY THIS IS WHEN WE WERE INITIALLY
7 DISCUSSING BRINGING THIS SUIT AGAINST MR. SHELTON?

8 A. YES, I WOULD SAY IN AND AROUND THAT TIME FRAME.
9 STARTED THE DISCUSSIONS PRETTY EARLY, BUT YES.

10 Q. I'M SORRY. SAY THAT AGAIN.

11 A. NO, I SAID WE STARTED -- WE HAD A SERIES OF
12 DISCUSSIONS ABOUT IT. THIS WAS EARLY ON, BUT YES.

13 Q. AND IT'S YOUR UNDERSTANDING AT THAT TIME THAT
14 YOU INTENDED TO ALSO INCLUDE RCS, MR. YASHAYEV AND
15 MR. SHARGEL IN THE CASE?

16 A. NO, IT'S NOT.

17 Q. NO?

18 A. I THINK WE HAD DISCUSSIONS WITH RESPECT TO THE
19 FACT THAT MY CONCERN WAS THERE WAS A PENDING ACTION,
20 THAT THEY COULD NOT BE INCLUDED, AND THAT I WAS
21 CONCERNED ABOUT THE POSSIBLE IMPACT ON OPENING UP FOR
22 MOTIONS, THAT THERE WERE POSSIBLE CONCURRENT CLAIMS.

23 GO AHEAD. I'M SORRY.

24 Q. DO YOU HAVE ANYTHING IN WRITING WHEN YOU EVER
25 ACTUALLY STATED THAT CONCERN TO ME?

1 A. NO, BUT -- I DON'T KNOW. I'D HAVE TO LOOK. I
2 DID NOT SEE ANYTHING, BUT I KNOW THAT I HAD
3 CONVERSATIONS WITH YOU, NUMEROUS CONVERSATIONS WITH YOU
4 ABOUT IT.

5 Q. CAN YOU GIVE --

6 A. THAT IS MY TESTIMONY.

7 Q. CAN YOU GIVE A SINGLE DATE FOR WHEN YOU ACTUALLY
8 HAD ONE OF THOSE CONVERSATIONS WITH ME?

9 A. I WOULD SAY PROBABLY BEGINNING AROUND APRIL 22ND
10 OF 2019 AND THEREAFTER NUMEROUS TIMES.

11 Q. SO YOU THINK THAT IS -- APRIL 22ND IS THE FIRST
12 TIME YOU RAISED THAT ISSUE?

13 A. PROBABLY, EARLY ON.

14 Q. IF I CAN DIRECT YOUR ATTENTION TO PAGE 265.

15 THE COURT: WE NEED TO BUTTON SOME OF
16 THIS UP AT THE END. BUT ARE WE MOVING EXHIBIT 20 INTO
17 EVIDENCE?

18 MR. THOMAS: YES, YOUR HONOR.

19 THE COURT: ANYBODY WITH ANY OBJECTION?
20 IT WILL COME IN. WHAT PAGE WAS IT?

21 MR. THOMAS: 265, YOUR HONOR.

22 THE WITNESS: THIS MIGHT ALREADY BE IN,
23 MY COUNSEL IS TELLING ME.

24 THE COURT: I SEE, IT'S EXHIBIT 5.

25 MR. THOMAS: THAT'S FINE.

1 (EXHIBIT 20, PAGE 276 OF THE COMBINED
2 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

3 THE WITNESS: CAN I LOOK AT IT AGAIN?

4 MR. THOMAS: YES. GO AHEAD.

5 BY MR. THOMAS:

6 Q. DO YOU SEE WHAT THAT E-MAIL IS?

7 A. YES, IT'S E-MAIL FROM YOU TO ME, DATED
8 DECEMBER 19, 2019.

9 Q. AND DO YOU SEE WHAT THAT E-MAIL IS ABOUT?

10 A. IT'S ABOUT THE 2020 CASE THAT WE WERE DISCUSSING
11 AT THE TIME, TO PREPARE TO FILE IT.

12 Q. DO YOU ACKNOWLEDGE THERE WAS A DRAFT OF THE
13 COMPLAINT ATTACHED TO THAT E-MAIL?

14 A. YEAH, I WOULD ACKNOWLEDGE THAT. I DON'T SEE IT
15 ATTACHED TO THIS SPECIFIC E-MAIL, BUT --

16 Q. DO YOU SEE AN ATTACHMENT?

17 A. NO, I DON'T SEE AN ATTACHMENT ON THIS E-MAIL
18 THAT I HAVE IN MY HAND.

19 Q. THE DRAFT OF THE COMPLAINT THAT WAS ATTACHED TO
20 THAT E-MAIL, IF I STATE THAT IT WAS ACTUALLY IN LARGE
21 PART THE EXACT SAME THING THAT WAS FILED IN THE 2020
22 CASE ON JANUARY 9, 2020, WOULD YOU AGREE TO THAT?

23 A. I WOULD LIKE TO SEE IT, BUT I WOULD SAY THAT
24 THAT IS A FAIR STATEMENT.

25 Q. AT ANY POINT IN THIS E-MAIL DID YOU STATE THAT

1 YOU WANTED TO REMOVE EITHER MR. YASHAYEV OR MR. SHARGEL
2 FROM THE COMPLAINT?

3 MR. SILVESTRO: OBJECTION, YOUR HONOR.
4 THERE IS NO FOUNDATION FOR THAT QUESTION. THERE IS NO
5 REFERENCE AT ALL TO MR. YASHAYEV OR MR. SHARGEL.

6 THE WITNESS: AND I WOULD ACTUALLY POINT
7 TO THAT, AND MY TESTIMONY REMAINS THAT I HAD HAD --

8 THE COURT: HOLD ON, HOLD ON,
9 MR. JACOVETTI, BECAUSE I HAVE AN OBJECTION IN FRONT OF
10 ME, SO BEFORE YOU TESTIFY --

11 THE WITNESS: I APOLOGIZE, YOUR HONOR.

12 THE COURT: SO I DO AGREE WITH THE
13 OBJECTION. I'M GOING TO SUSTAIN IT.

14 MR. THOMAS: I'M GOING TO SUBMIT ONE MORE
15 ADDITIONAL ITEM -- TO CLARIFY THAT MR. JACOVETTI DOES
16 NOT WANT TO ACTUALLY CONFIRM THAT, I'LL BE SUBMITTING
17 ONE ADDITIONAL ITEM THAT IS A CONTINUATION OF THIS
18 E-MAIL. ONE MOMENT.

19 THE COURT: WELL, I DON'T UNDERSTAND.
20 YOU ARE SAYING YOU HAVE MORE EXHIBITS THAT YOU DID NOT
21 BOTHER TO SUBMIT IN COMPLIANCE WITH MY ORDER,
22 MR. THOMAS?

23 MR. THOMAS: I'M SAYING THAT -- WELL, I
24 BELIEVE THE DRAFT WAS -- I'M SAYING THAT THE DRAFT THAT
25 WAS SENT TO HIM WAS THE FIRST COMPLAINT THAT WAS FILED.

1 SO IT WAS THE FIRST COMPLAINT THAT WAS ACTUALLY
2 SUBMITTED.

3 THE COURT: OKAY. BUT I DON'T SEE THIS
4 E-MAIL EVEN HAVING AN ATTACHMENT. THERE WAS AN EARLIER
5 E-MAIL THAT HAD AN ATTACHMENT IN OCTOBER.

6 MR. THOMAS: CORRECT. LET ME SEE IF I
7 ACTUALLY HAVE THAT ATTACHED. IT SHOULD BE ATTACHED.
8 GIVE ME ONE MOMENT, YOUR HONOR.

9 MR. SILVESTRO: YOUR HONOR, IF I CAN
10 SHORT-CIRCUIT THIS, MY CLIENT HAS ALREADY TESTIFIED THAT
11 HE HAS SEEN A DRAFT. IF THAT IS WHERE MR. THOMAS IS
12 HEADING RIGHT NOW, I DON'T UNDERSTAND WHAT THE PURPOSE
13 OF THIS IS.

14 THE COURT: I DON'T KNOW THAT IT MATTERS,
15 MR. THOMAS, WHETHER OR NOT -- I MEAN, WHETHER OR NOT
16 THERE IS AN E-MAIL, BUT I GUESS I WOULD LIKE -- IF YOU
17 CAN FIND THE E-MAIL, I'M WILLING TO LOOK AT IT FROM
18 OCTOBER 30TH.

19 MR. THOMAS: I MEAN, I ALSO ACTUALLY HAVE
20 ONE AFTER THAT AS WELL THAT SHOWS -- AND I WILL SEND THE
21 ATTACHMENT SO THAT IT IS CLEAR -- THAT SHOWS THE EXACT
22 VERSION THAT WAS ATTACHED TO --

23 THE COURT: WELL, I'M LESS INTERESTED IN
24 ONES, MR. THOMAS, THAT YOU DON'T HAVE DOCUMENTS
25 REFERENCING. I'M INTERESTED IN THE ONE FROM

1 OCTOBER 30TH BECAUSE I HAVE GOT AN E-MAIL HERE THAT IS
2 NOW IN EVIDENCE -- OR I GUESS YOU ARE GOING TO MOVE FOR
3 IT TO BE IN EVIDENCE -- AND IT'S IN FRONT OF ME AND IT
4 TALKS ABOUT A SPECIFIC COMPLAINT THAT IS ATTACHED. IF
5 YOU COULD -- IF YOU HAVE THAT E-MAIL, I GUESS I'M
6 WILLING TO LOOK AT IT.

7 I WILL TELL YOU NOW, MR. THOMAS, THIS IS
8 THE LAST TIME I'M GOING TO ENTERTAIN SOMETHING THAT YOU
9 DID NOT SUBMIT TO ME. I TOLD YOU TO SUBMIT STUFF IN
10 ADVANCE TO SIMPLIFY THIS PROCEEDING, AND YOU DIDN'T DO
11 THAT.

12 MR. THOMAS: I SUBMITTED EVERYTHING I
13 THOUGHT I WOULD BE NEEDING, YOUR HONOR. FRANKLY, I
14 EXPECTED HIM TO AGREE THAT IT WAS THE SAME VERSION, BUT
15 SINCE HE'S NOT --

16 THE COURT: I'M SORRY IF YOU ARE
17 DISAPPOINTED IN THE TESTIMONY, BUT YOUR GOAL IS TO
18 SUBMIT STUFF IN ADVANCE WHEN I TELL YOU TO DO THAT.

19 MR. THOMAS: UNDERSTOOD, YOUR HONOR. I
20 NEED THE E-MAIL ADDRESS TO SUBMIT FOR MR. JACOVETTI'S
21 ATTORNEY.

22 MR. SILVESTRO: J AS IN JOSEPH, S AS IN
23 SALARY, J AS IN JOSEPH, @JOSEPHSILVESTROLAW,
24 J-O-S-E-P-H, S-I-L-V-E-S-T-R-O, L-A-W --.COM, AND I HAVE
25 BEEN RECEIVING E-MAILS FROM THE COURT FOR THE LAST THREE

1 DAYS. IT'S ON THERE SO YOU COULD FORWARD IT ON THAT
2 E-MAIL.

3 MR. THOMAS: OKAY. I JUST SENT IT ALL
4 AGAIN. IT'S THE E-MAIL THAT SPECIFICALLY ACTUALLY HAS
5 MR. JACOVETTI'S CREDIT CARD INFORMATION REDACTED. IT
6 ALSO HAS THE TWO ATTACHED ITEMS WHICH INCLUDES THE LAST
7 DRAFT COMPLAINT THAT DOES ACTUALLY INCLUDE MR. SHARGEL
8 AND MR. EMIL YASHAYEV, SO THAT SPECIFICALLY WAS JUST
9 SENT.

10 THE COURT: NO. LOOK, SO YOU SENT AN
11 E-MAIL FROM WHEN, MR. THOMAS?

12 MR. THOMAS: THIS IS THE LAST E-MAIL
13 PRIOR TO ACTUALLY FILING THAT SPECIFICALLY HAS THE DRAFT
14 OF THE COMPLAINT. THAT IS THE FINAL ONE THAT WAS
15 SUBMITTED. AND IT SHOWS THAT MR. JACOVETTI IS
16 CONFIRMING THAT IT "LOOKS GOOD."

17 THE COURT: I DON'T WANT YOU TO
18 CHARACTERIZE IT FOR HIM. I'M JUST ASKING WHAT YOU'RE
19 SUBMITTING, WHAT ARE YOU GIVING ME. YOU ARE NOT
20 TESTIFYING RIGHT NOW.

21 MR. THOMAS: I'M SUBMITTING THE E-MAIL
22 THAT SPECIFICALLY WAS RECEIVED FROM MR. JACOVETTI THAT
23 SPECIFICALLY CHANGES -- I'M SORRY, THAT SPECIFICALLY
24 STATES -- I WILL LET HIM STATE IT, BUT IT HAS THE LAST
25 VERSION OF THE COMPLAINT ATTACHED, ALONG WITH THE SKIP,

1 S-K-I-P, TRACE REPORT.

2 THE COURT: EXHIBIT 21 WILL BE PAGES 265
3 AND 266 FROM YOUR PDF, MR. SHELTON.

4 MR. THOMAS: I THINK THAT'S EXHIBIT 5,
5 YOUR HONOR.

6 THE COURT: I'M SORRY, YOU ARE RIGHT.
7 THAT IS ALREADY EXHIBIT 5.

8 EXHIBIT 21 THEN WILL BE THIS E-MAIL THAT
9 WE JUST GOT FROM YOU, DATED DECEMBER 21.

10 MR. THOMAS: AND THE ATTACHMENTS.

11 THE COURT: YES, OKAY.

12 BY MR. THOMAS:

13 Q. MR. JACOVETTI, PLEASE LET ME KNOW WHEN YOU GET A
14 CHANCE TO REVIEW THE E-MAIL AND THE DRAFT COMPLAINT THAT
15 WAS ATTACHED TO THAT E-MAIL.

16 (MR. SILVESTRO AND HIS CLIENT CONFERRING
17 OFF THE RECORD.)

18 THE COURT: WE ARE GOING TO DO THIS.

19 MR. THOMAS, YOU SENT THIS. DO YOU HAVE
20 IT IN HAND, MR. JACOVETTI?

21 MR. JACOVETTI: I THINK SO, YOUR HONOR.
22 I'M TRYING TO IDENTIFY IT NOW.

23 THE COURT: I'M JUST ASKING IF YOU HAVE
24 IT. I DON'T WANT TO KNOW FROM SOME TESTIMONIAL
25 STANDPOINT. YOU HAVE PHYSICALLY WHAT HE E-MAILED,

1 RIGHT?

2 THE WITNESS: YES, I DO. YES, YOUR
3 HONOR.

4 THE COURT: OKAY.

5 MR. THOMAS, I'M GOING TO LET YOU ASK SOME
6 QUESTIONS AND LAY A FOUNDATION AND THEN WE WILL SEE
7 WHERE WE ARE. OKAY.

8 MR. THOMAS: THANK YOU, YOUR HONOR.
9 BY MR. THOMAS:

10 Q. MR. JACOVETTI, DO YOU REMEMBER SENDING ME AN
11 E-MAIL ON DECEMBER 21ST THAT INCLUDED THE CARD
12 INFORMATION TO FILE FOR THE FILING FEE AND WHERE YOU
13 ATTACHED A SKIP TRACE REPORT FOR DAN BOGER AND SAYING
14 THAT THE COMPLAINT LOOKS GOOD?

15 A. I REMEMBER SENDING YOU AN E-MAIL AND
16 COMMUNICATING. I DON'T HAVE THAT E-MAIL IN MY HANDS,
17 HOWEVER.

18 Q. THE E-MAIL THAT I JUST SENT, DECEMBER 21ST, IS
19 THAT THE E-MAIL THAT YOU SENT ME THAT LITERALLY SAYS
20 WHAT I JUST STATED?

21 A. I HAVE SOMETHING DIFFERENT IN MY HAND. MY
22 ATTORNEY IS TRYING TO PRINT IT OUT NOW. HOLD ON,
23 PLEASE.

24 MR. SILVESTRO: I DID NOT KNOW THAT IT
25 WAS AN ATTACHMENT.

1 THE WITNESS: IT CAME OVER AS AN
2 ATTACHMENT. HE IS PRINTING IT OUT NOW.

3 MR. THOMAS: UNDERSTOOD. I TRIED TO MAKE
4 IT EASY.

5 THE WITNESS: OKAY. APOLOGIZE TO THE
6 COURT. SORRY, YOUR HONOR.

7 JOSH, YES, OKAY, I REMEMBER THIS E-MAIL.
8 BY MR. THOMAS:

9 Q. AND AS PART OF THAT E-MAIL, WERE THERE TWO
10 ATTACHMENTS, AS YOU CAN SEE?

11 A. YES, THERE IS A DRAFT -- YES.

12 Q. A DRAFT COMPLAINT. IS IT THE ONE THAT I JUST
13 SENT YOU?

14 A. I HAVE A DRAFT -- PROBABLY. SO I WILL SAY YES.

15 Q. DOES THAT DRAFT INCLUDE MR. SHARGEL AND
16 MR. YASHAYEV?

17 A. IT DOES.

18 Q. BASED ON YOUR RECOLLECTION PRIOR TO FILING THE
19 COMPLAINT, DID YOU EVER ACTUALLY SEND ME AN E-MAIL OR
20 TEXT OR ANYTHING SAYING TO REMOVE THEM FROM THIS
21 COMPLAINT?

22 A. I DID NOT HAVE TO. I KNOW THAT WE HAD SEVERAL
23 CONVERSATIONS, OKAY, ABOUT THAT. OKAY? AND MY
24 UNDERSTANDING WAS PRIOR TO THAT WAS THAT THEY WOULD NOT
25 BE INCLUDED AND YOU REASSURED ME NUMEROUS TIMES THAT IT

1 WILL BE REVISED TO OMIT THEM.

2 Q. IS --

3 A. MAY I FINISH MY ANSWER, MR. THOMAS? THANK YOU.

4 AT THIS DRAFT, WHICH IS DATED
5 DECEMBER 21ST, IT WAS NOT FILED, I THINK, UNTIL JANUARY,
6 AND WE HAD CONVERSATIONS AFTER THAT WHERE YOU ASSURED ME
7 THAT IT WOULD BE REVISED TO OMIT THEM UPON FILING. THAT
8 IS MY TESTIMONY.

9 Q. DO YOU HAVE ANY DOCUMENTS, E-MAIL, TEXT OR
10 ANYTHING OR ANY SPECIFIC CALLS THAT HAPPENED BETWEEN
11 DECEMBER 21ST WHEN YOU SENT ME THE FEE FOR THE FILING
12 FEE AND WHEN THE COMPLAINT WAS FILED, ANYTHING THAT
13 ACTUALLY SHOWS THAT TO BE ACCURATE?

14 A. WE HAD THOSE CONVERSATIONS VERBALLY, AND I HAVE
15 SPECIFIC RECOLLECTIONS OF NUMEROUS TIMES DISCUSSING THAT
16 WITH YOU.

17 Q. ARE YOU AWARE OF THE FACT THAT THERE WAS A
18 MOTION TO AMEND THAT WAS SPECIFICALLY FILED MARCH 6TH,
19 MOTION TO REOPEN AND AMEND?

20 A. I KNOW THAT WE HAD CONVERSATIONS WITH RESPECT TO
21 OMITTING THE OTHER PLAINTIFFS AND THAT IT WAS GOING TO
22 BE DONE THROUGH AN AMENDED COMPLAINT. I BELIEVE THAT
23 YOU INFORMED ME THAT THE COURT DENIED LEAVE TO FILE THE
24 AMENDED COMPLAINT AND THAT YOU WERE GOING TO MOVE FOR
25 THE COURT TO DO SO.

1 Q. WHEN DID I SAY THAT THE COURT DENIED LEAVE TO
2 AMEND?

3 A. I DON'T HAVE A SPECIFIC DATE, BUT I KNOW IT WAS
4 AFTER YOU FILED THIS, BECAUSE AS SOON AS I FOUND OUT
5 THAT IT WAS FILED, I CONTACTED YOU, AND CHALLENGED YOU
6 ON WHY IT WAS FILED WITH THE CO-PLAINTIFFS IN IT. I
7 NEVER GAVE YOU AUTHORIZATION TO PUT THEM IN IT. I WAS
8 CONCERNED ABOUT THE EFFECT IT WOULD HAVE ON THE
9 VIABILITY OF MY ACTION.

10 Q. CAN YOU GO TO PAGE 55 IN THE DOCUMENTS THAT I
11 SENT OVER, PLEASE. I DON'T THINK IT'S ACTUALLY BEEN
12 SUBMITTED.

13 THE COURT: IT IS. IT'S EXHIBIT 13.

14 THE WITNESS: I HAVE EXHIBIT 13 IN MY
15 HAND.

16 BY MR. THOMAS:

17 Q. DO YOU SEE THAT E-MAIL?

18 A. I DO.

19 Q. DO YOU REMEMBER RECEIVING THAT E-MAIL?

20 A. IT'S MY E-MAIL ADDRESS, SO I DID RECEIVE IT. DO
21 I HAVE A SPECIFIC RECOLLECTION OF RECEIVING IT, NO, BUT
22 I RECEIVED IT.

23 Q. PRIOR TO THAT TIME -- YOU KNOW WHAT, I'M GOING
24 TO ASK THE NEXT QUESTION.

25 SO YOU CONFIRMED THAT YOU RECEIVED THIS

1 E-MAIL THAT I SHOWED YOU THAT WE CAN AMEND, CORRECT?

2 A. THAT WE COULD AMEND, YES.

3 Q. DID YOU AT ANY TIME HIRE MR. ARTOM-GINZBURG TO
4 REPRESENT YOU IN THIS MATTER?

5 A. NO.

6 Q. DID YOU AT ANY TIME DISCUSS YOUR TESTIMONY WITH
7 MR. ARTOM-GINZBURG BEFORE TODAY?

8 A. NO.

9 Q. AT ANY TIME PRIOR TO THIS MATTER -- LET ME TAKE
10 THAT BACK. HOLD UP ONE SECOND. GIVE ME ONE MOMENT.

11 MR. THOMAS: NO FURTHER QUESTIONS AT THIS
12 TIME.

13 THE COURT: I HAVE TWO QUICK ONES, AND
14 THEN HOPEFULLY WE CAN WRAP IT UP WITH MR. JACOVETTI.
15 BY THE COURT:

16 Q. MR. JACOVETTI, WITH RESPECT TO THIS LAST EXHIBIT
17 AND THE DISCUSSION ABOUT FILING THE AMENDED COMPLAINT IN
18 THE -- IN YOUR ACTION, THE JACOVETTI LAW ACTION, DID YOU
19 EVER DISCUSS WITH MR. THOMAS THE FACT THAT I HAD
20 DISMISSED THE CASE?

21 A. NOT CONTEMPORANEOUSLY, YOUR HONOR, NO.

22 Q. SO YOU NEVER HEARD ANYTHING ABOUT THE FACT THAT,
23 FOR EXAMPLE, I GRANTED A MOTION FOR JUDGMENT ON THE
24 PLEADINGS BECAUSE IT WAS NOT RESPONDED TO?

25 A. NO.

1 Q. DID YOU READ -- THIS LAST EXHIBIT THAT I GOT
2 HERE -- OR THE LAST EXHIBIT THAT WAS REFERENCED WHICH I
3 THINK IS TECHNICALLY EXHIBIT 13, TALKS ABOUT -- IT
4 ATTACHES THE DECISION THAT I ISSUED GRANTING LEAVE TO
5 FILE THE AMENDED COMPLAINT. DID YOU READ IT WHEN IT
6 CAME?

7 A. AT THE TIME, NO, YOUR HONOR. THIS WAS
8 APRIL 27TH OF 2020, AND I WAS UNFORTUNATELY OR
9 INEXPLICABLY PREOCCUPIED. I WAS IN THE MIDST OF TRYING
10 TO KEEP MY PRACTICE AFLOAT. I WAS WORKING OUT OF MY
11 HOUSE. MY KIDS WERE HOME. SO I WAS A LITTLE
12 PREOCCUPIED, AND I WAS RELYING ON MY ATTORNEY TO KEEP ME
13 INFORMED IN AN AFFIRMATIVE MANNER.

14 THE COURT: THAT IS ALL I HAVE.

15 ANYONE HAVE OTHER FOLLOW-UP?

16 MR. SILVESTRO, I WILL START WITH YOU.

17 MR. SILVESTRO: NO, YOUR HONOR.

18 THE COURT: MR. ARTOM-GINZBURG?

19 MR. ARTOM-GINZBURG: NO.

20 THE COURT: MR. REO?

21 MR. REO: I HAVE A FEW BRIEF QUESTIONS.

22 I WILL BE VERY QUICK.

23 RECROSS EXAMINATION

24 BY MR. REO:

25 Q. MR. JACOVETTI, DID JOSHUA THOMAS EVER EXPLAIN TO

1 YOU THAT THE OTHER ATTORNEY WHO WOULD BE ENTERING AN
2 APPEARANCE ON BEHALF OF HIMSELF, JOSHUA THOMAS, WOULD BE
3 DOING SO FOR ETHICS REASONS RELEVANT TO JOSHUA THOMAS?

4 A. NOT CONTEMPORANEOUSLY. NOT AT THAT TIME.

5 Q. SO IS IT FAIR TO SAY THAT IT WAS YOUR
6 UNDERSTANDING THAT THE OTHER ATTORNEY WAS COMING ON THE
7 CASE TO TAKE OVER COURT APPEARANCES AND THAT JOSHUA
8 THOMAS WOULD CONTINUE BEHIND THE SCENES DOING DOCUMENT
9 WORK BECAUSE JOSHUA THOMAS ALLEGED THAT THE JUDGE IN
10 THIS CASE, THE HONORABLE JUDGE WOLSON, DID NOT LIKE
11 JOSHUA THOMAS?

12 A. YES.

13 Q. DID JOSHUA THOMAS EVER TELL YOU THAT THE HEARING
14 HE WANTED THE OTHER ATTORNEY PRESENT FOR WAS A HEARING
15 ON SANCTIONS AGAINST JOSHUA THOMAS HIMSELF?

16 A. TO THE EXTENT THAT THERE WERE DISCUSSIONS WITH
17 MR. THOMAS REGARDING THE POSSIBILITY OF SANCTIONS, I
18 DON'T HAVE A SPECIFIC RECOLLECTION OF BEING INFORMED OF
19 THAT.

20 MR. REO: NOTHING FURTHER. THANK YOU,
21 SIR.

22 THE COURT: MR. THOMAS.

23 MR. THOMAS: IF I MAY BRIEFLY DIRECT.

24 RECROSS EXAMINATION

25 BY MR. THOMAS:

1 Q. MR. JACOVETTI, I'M GOING TO TAKE YOUR ATTENTION
2 AGAIN TO PAGE 254.

3 A. WHAT EXHIBIT IS THAT?

4 THE COURT: WHAT EXHIBIT IS THAT?

5 MR. THOMAS: EXHIBIT 19. I'M SORRY.

6 THE WITNESS: OKAY.

7 BY MR. THOMAS:

8 Q. WHAT WAS YOUR UNDERSTANDING WHEN HE SPECIFICALLY
9 SAID HIS REPRESENTATION IS OF ME ONLY THEN?

10 A. I DIDN'T SEE THIS E-MAIL, THE RESPONSE. WE WERE
11 HAVING A SERIES OF CONVERSATIONS, AND I THINK I
12 REPRESENTED TO YOU THAT IF HE WAS GOING TO BE INCOMING
13 COUNSEL FOR THE 2020 ACTION, WE OUGHT TO HAVE A CALL.
14 OKAY? AND YOU WERE GOING TO TRY AND SET IT UP. AND
15 THEN I DON'T HAVE A SPECIFIC -- I DON'T REMEMBER AT WHAT
16 POINT THE FACT THAT IT WAS FOR SANCTIONS WAS ADDRESSED.
17 I DON'T HAVE A SPECIFIC RECOLLECTION, BUT IT WAS
18 SOMETIME AFTER THAT.

19 Q. DO YOU REMEMBER WHAT YOU MEANT THEN WHEN YOU
20 SAID DOES HE UNDERSTAND -- DOES HE UNDERSTAND THAT THE
21 TOPIC FOR THE CALL IS TO POTENTIALLY STEP IN AS COUNSEL?
22 DO YOU UNDERSTAND THAT?

23 A. YES, BECAUSE I THOUGHT THAT HE WAS COMING IN TO
24 REPRESENT ME.

25 MR. THOMAS: NO FURTHER QUESTIONS.

1 THE COURT: ALL RIGHT, MR. JACOVETTI, I
2 APPRECIATE YOUR TIME.

3 (WITNESS EXCUSED.)

4 THE COURT: SO I THINK ALL WE HAVE LEFT
5 NOW IS TO HEAR FROM MR. THOMAS. MR. THOMAS, I DON'T
6 KNOW HOW YOU WANT TO DO THIS. I MEAN, I GUESS IT'S UP
7 TO YOU -- LET ME ACTUALLY STOP BEFORE I DO THAT AND JUST
8 ASK.

9 I THINK THAT RUNS THE LIST OF
10 MR. ARTOM-GINZBURG'S WITNESSES OTHER THAN MR. THOMAS.
11 IS THAT RIGHT, MR. ARTOM-GINZBURG?

12 THE WITNESS: THAT'S CORRECT. MR. THOMAS
13 IS THE ONLY OTHER WITNESS ON MY LIST.

14 THE COURT: WELL, SO LET ME START WITH
15 THIS.

16 MR. THOMAS, DO YOU INTEND TO TESTIFY ON
17 YOUR OWN BEHALF?

18 MR. THOMAS: I WILL, BUT I'D ALSO STATE
19 THAT I WAS GOING TO BE STILL CALLING AND ASKING THE
20 COURT TO PERMIT TESTIMONY BY MR. ARTOM-GINZBURG.

21 THE COURT: ABOUT WHAT? WE ARE NOT THERE
22 YET, BUT -- SO LET'S SEE WHERE WE ARE FIRST WITH YOUR
23 TESTIMONY. TELL ME MECHANICALLY WHAT IT IS YOU -- HOW
24 YOU WANT TO PROCEED. ARE YOU JUST GOING TO TESTIFY IN
25 THE NARRATIVE, MR. THOMAS?

1 MR. THOMAS: THAT'S FINE. I WAS JUST
2 GOING TO MAKE SOME STATEMENTS, AND THEN I ASSUME THERE
3 WOULD BE CROSS AND THAT WOULD BE ABOUT IT.

4 THE COURT: THEN GO AHEAD. I WILL LET
5 YOU TESTIFY IN NARRATIVE TO START.

6 MR. THOMAS: ACTUALLY, PRIOR TO THAT
7 POINT, CAN I MOVE IN ALL EXHIBITS THAT HAVE NOT BEEN
8 MOVED IN AT THIS TIME?

9 THE COURT: LET'S RUN THROUGH THESE AND
10 MAKE SURE, JUST ONE-BY-ONE I DON'T HAVE ANY OBJECTIONS.
11 THE ONES I HAVE THAT HAVE NOT BEEN MOVED IN ARE EXHIBIT
12 11, WHICH IS PAGE 18 OF MR. ARTOM-GINZBURG'S SUBMISSION.

13 ANYBODY HAVE OBJECTIONS TO THAT?

14 MR. REO: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT. SO 11 WILL COME
16 IN.

17 (EXHIBIT 11, PAGE 18 OF THE EMAIL AND SMS
18 EXHIBITS PDF, ADMITTED INTO EVIDENCE.)

19 THE COURT: 12 IS PAGE 54 OF MR. THOMAS'S
20 PDF. TAKE SILENCE AS NO OBJECTIONS. THAT WILL COME
21 IN.

22 (EXHIBIT 12, PAGE 54 OF THE COMBINED
23 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

24 THE COURT: 13 I THINK IS PAGE 55 OF
25 MR. THOMAS'S PDF. I WILL TAKE THAT SILENCE AS GOLDEN.

1 THAT WILL COME IN.

2 (EXHIBIT 13, PAGE 55 OF THE COMBINED
3 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

4 THE COURT: EXHIBIT 14 IS PAGES 15 TO 17
5 IN MR. THOMAS'S PDF. HEARING NO OBJECTIONS.

6 (EXHIBIT 14, PAGES 15 TO 17 OF THE
7 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

8 THE COURT: EXHIBIT 17 IS PAGE 11 OF
9 MR. THOMAS'S PDF. OKAY.

10 (EXHIBIT 17, PAGE 11 OF THE COMBINED
11 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

12 THE COURT: AND EXHIBIT 18 IS PAGES 273
13 AND 274 FROM THE PDF, FROM MR. THOMAS'S PDF. HEARING
14 NOTHING, SO NO OBJECTIONS.

15 (EXHIBIT 18, PAGES 273 TO 274 OF THE
16 COMBINED DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

17 THE COURT: AND THE LAST EXHIBIT IS
18 EXHIBIT 21, WHICH IS THE E-MAIL FROM DECEMBER 21ST OF
19 2019 THAT MR. THOMAS E-MAILED AROUND.

20 I'M SORRY. I'M BEING CORRECTED.

21 EXHIBIT 17, MAYBE THIS IS WHERE I GOT
22 MESSED UP. IS EXHIBIT 17 PAGE 11 FROM THE DOCKET, NOT
23 FROM MR. THOMAS'S PDF, RIGHT?

24 MR. THOMAS: I HAVE EXHIBIT 17, YOUR
25 HONOR, AS BEING PAGE 53.

1 THE COURT: OKAY. I HAVE IT. SO LET ME
2 TRY TO MAKE SURE WE ARE ALL ON THE SAME PAGE.

3 EXHIBIT 17. MR. ARTOM-GINZBURG, DO YOU
4 HAVE THAT AS PAGE 53?

5 MR. ARTOM-GINZBURG: ONE MOMENT, YOUR
6 HONOR. 53, THAT IS THE OCTOBER 4TH E-MAIL. YES, I HAVE
7 NO OBJECTION TO THAT.

8 THE COURT: THAT IS EXHIBIT 17. IS THAT
9 WHAT YOU HAVE?

10 MR. ARTOM-GINZBURG: YES.

11 THE COURT: SO THAT WILL BE PAGE 53, AND
12 NO OBJECTIONS TO THAT. ANYONE ELSE HAVE AN OBJECTION TO
13 THAT ONE?

14 NO. OKAY.

15 (EXHIBIT 17, PAGE 53 OF THE COMBINED
16 DISCOVERY PDF, ADMITTED INTO EVIDENCE.)

17 THE COURT: THEN EXHIBIT 21 IS THE E-MAIL
18 THAT MR. THOMAS CIRCULATED FROM DECEMBER 21, 2019 WITH
19 TWO ATTACHMENTS, THE SKIP TRACE REPORT AND THE
20 COMPLAINT. DO I HAVE AN OBJECTION TO THAT? NOPE.

21 (EXHIBIT 21, 12-21-19 E-MAIL WITH
22 ATTACHMENTS, ADMITTED INTO EVIDENCE.)

23 THE COURT: THEN THEY WILL ALL BE
24 ADMITTED.

25 AND THEN WE WILL TURN TO MR. THOMAS FOR

1 TESTIMONY. GO AHEAD, MR. THOMAS.

2 MR. THOMAS: THANK YOU, YOUR HONOR.

3 IT IS MY POSITION AND THAT

4 MR. ARTOM-GINZBURG HAS PUT MR. YASHAYEV -- I SHOULD SAY

5 MR. SHARGEL AND TO A LESSER EXTENT MR. YASHAYEV UP TO

6 TRY AND SUBMIT THESE DOCUMENTS. HE SUBMITTED A

7 CERTIFICATION CLAIMING THAT THAT WAS NOT THEIR

8 SIGNATURES. THAT TURNED OUT TO BE FALSE.

9 THE COURT: MR. THOMAS, LET ME STOP YOU

10 RIGHT AWAY. I'M NOT YET INTERESTED IN ARGUMENT. I WANT

11 FACTUAL NARRATIVE, RIGHT? ACTUALLY, I GUESS I SHOULD --

12 IF WE ARE GOING TO HAVE YOU TESTIFY, WE SHOULD PROBABLY

13 SWEAR YOU IN.

14 MY QUESTION WAS, DO YOU WANT TO TESTIFY

15 ON YOUR OWN BEHALF? I THINK THE ANSWER WAS YES. IS THE

16 ANSWER YES OR DO YOU WANT TO JUST --

17 MR. THOMAS: THE ANSWER IS YES. I GUESS

18 I WAS NOT SURE EXACTLY THE NATURE OF THAT. BUT I

19 UNDERSTAND WHAT YOU ARE SAYING, NOW, YES.

20 LET ME HAVE MS. BUENZLE SWEAR YOU IN.

21 (JOSHUA THOMAS, SWORN.)

22 THE COURT: OKAY. GO AHEAD, MR. THOMAS.

23 MR. THOMAS: SO I GUESS I WILL TRY TO

24 MAKE IT FACTUALLY BASED.

25 THIS COMPLAINT WAS SUBMITTED AUGUST 30TH,

1 2018. I HAD BEEN CONTACTED BY MR. -- INITIALLY
2 MR. JACOVETTI TO REPRESENT MR. SHARGEL AND MR. YASHAYEV.
3 I SIGNED ON TO ACTUALLY REPRESENT THEM. AFTER REVIEWING
4 THE MATTER WITH THEM, THEY SUBMITTED TO ME SUBSTANTIAL
5 DOCUMENTS THAT SHOWED THAT THEY HAD A POSITIVE CASE AND
6 TO DEFEND AGAINST MR. SHELTON'S CLAIMS.

7 I CONTINUED TO REPRESENT THEM, SUBMITTED
8 -- I GUESS THERE WAS AN AMENDED COMPLAINT SUBMITTED FROM
9 MR. JACOVETTI SOON AFTER MY NOTICE OF APPEARANCE.
10 MR. JACOVETTI ASKED ME TO REPRESENT HIM ON THAT MATTER
11 AS WELL.

12 AGAIN, I'M TRYING TO JUST GO IN ORDER.
13 THERE WAS A REQUEST FOR DEFAULT THAT WAS SUBMITTED. IT
14 WAS THEN VACATED BECAUSE WE SUBMITTED A MOTION TO
15 VACATE. WE THEN SUBMITTED AN ANSWER. THEY ALSO
16 WITHDREW THE CLAIMS AGAINST MR. JACOVETTI AND HIS FIRM
17 BASED OFF OF OUR PLEADINGS. AND IT WAS AROUND THAT TIME
18 THAT THEY WERE WITHDRAWN. FIRST WE FILED A MOTION TO
19 DISMISS IN FEBRUARY, AND THEN IT WAS AN ORDER THAT THE
20 MOTION TO DISMISS WAS DENIED, AND THEN WE SUBMITTED AN
21 ANSWER APRIL 30TH. IT WAS AROUND -- OF 2019.

22 IT WAS AROUND THAT TIME THAT ALL PARTIES,
23 MR. JACOVETTI AS WELL AS MR. SHARGEL -- AND WHEN I SAY
24 ALL PARTIES, I'D SAY -- FOR MR. YASHAYEV, HE JUST WAS
25 NOT PART OF THE PHONE CALLS VERY OFTEN. IT WAS USUALLY

1 MYSELF, MR. JACOVETTI AND THEN MR. SHARGEL. SO WHEN I
2 SAY "ALL PARTIES," THAT IS WHO I AM REFERENCING.
3 MR. YASHAYEV JUST -- AND HE ADMITTED HE JUST WAS NOT
4 PART OF IT THAT MUCH AND THEN MR. SHARGEL WOULD ACTUALLY
5 SEND INFORMATION TO HIM. SO IT WAS AROUND THAT TIME IN
6 APRIL THAT WE DISCUSSED ACTUALLY POTENTIALLY TRYING TO
7 PURSUE A CASE AGAINST MR. SHELTON THAT WAS BEING WORKED
8 ON FOR SOME TIME. IT WAS NOT ACTUALLY FILED UNTIL
9 JANUARY OF 2020, BUT OVER NUMEROUS PHONE CALLS IT WAS
10 ALWAYS THE UNDERSTANDING THAT ALL THE PARTIES INVOLVED
11 IN THIS CASE, NOT JUST MR. JACOVETTI AND HIS FIRM, BUT
12 ALL THE PARTIES INVOLVED IN THE CASE WOULD ACTUALLY BE
13 INTERESTED IN PURSUING AGAINST MR. SHELTON.

14 MR. JACOVETTI AT ONE POINT ACTUALLY ASKED
15 ABOUT PURSUING AGAINST MR. REO AND MR. MORROW AS WELL,
16 BUT I HAD INFORMED THEM THAT THAT ACTUALLY WOULD NOT BE
17 FEASIBLE AT THIS TIME.

18 THERE WAS EVENTUALLY, AND I BELIEVE THIS
19 IS -- THERE WAS A MOTION FOR SUMMARY JUDGMENT FILED
20 WHERE WE ACTUALLY REQUESTED AN EXTENSION, AND ULTIMATELY
21 THERE WAS AN AMENDED MOTION FOR SUMMARY JUDGEMENT WHERE
22 THAT EXTENSION WAS FIRST DEEMED MOOT. WE FURTHER
23 REQUESTED AN EXTENSION AND THEN ULTIMATELY IT WAS DENIED
24 WITH THE MEMORANDUM OR OPINION SUBMITTED DECEMBER OF
25 2019.

1 I HAD SPOKEN WITH MY CLIENTS ABOUT THE
2 FACT THAT THEY STILL HAD SOME RECORDINGS AND THAT THEY
3 WANTED TO ACTUALLY GET THOSE RECORDINGS TO ME BECAUSE
4 THEY FELT IT WOULD ACTUALLY IMPROVE THE CASE AGAINST
5 MR. SHELTON. THAT IS WHY THEY WERE INCLUDED.

6 THERE WAS A MOTION FOR RECONSIDERATION
7 FILED BASED ON THOSE RECORDINGS, JANUARY 27, AND THOSE
8 RECORDINGS WERE EVENTUALLY REDUCED TO A TRANSCRIPT SOON
9 AFTER THAT FILING.

10 THERE WAS A SUPPLEMENTAL -- I GUESS A
11 SECOND ACTION MOTION, RENEWED MOTION FOR SUMMARY
12 JUDGEMENT THAT WAS THEN FILED JUNE 1ST AS WELL AS A
13 MOTION FOR PRELIMINARY INJUNCTION AFTER DISCUSSING WITH
14 THE CLIENTS REGARDING TO TRY AND STOP THE DISCOVERY FROM
15 BEING COLLECTED.

16 THEY WERE OPPOSED. ULTIMATELY THERE WAS
17 AN OPINION SUBMITTED JUNE 17TH, 2020, AND THERE WAS AN
18 APPEAL FILED AFTER SPEAKING WITH MR. SHARGEL AND
19 MR. YASHAYEV, THAT THEY DID ACTUALLY WANT TO MOVE
20 FORWARD WITH THE APPEAL.

21 AT ALL TIMES THEY WERE SUBMITTING, NOT
22 JUST THE RECORDINGS TO ME, BUT THEY REVIEWED THE OTHER
23 RECORDINGS FROM MR. O'HARE, AND THEY AGREED THAT THIS
24 WAS A SUBSTANTIAL ISSUE THAT NEEDED TO BE BEFORE THE
25 COURT, THAT THE RECORDINGS SHOWED A PATTERN AND PRACTICE

1 ON BEHALF OF MR. SHELTON, NOT JUST THEM, BUT OF OTHER
2 PARTIES AS WELL AND THAT IS WHY THEY WANTED TO PRESENT
3 IT IN FRONT OF THE COURT.

4 DURING THAT TIME, WE WERE ALSO
5 DISCUSSING, AND AS THE E-MAILS SHOW, THERE WAS
6 DISCUSSION ABOUT COLLECTING OF DISCOVERY. SOME WAS
7 COLLECTED UP, AND THEY SENT OVER EVERYTHING THAT THEY
8 BELIEVED WAS REQUIRED, AND IT WAS SUBMITTED TO THE
9 COURT.

10 THERE WAS ANOTHER HEARING ON THAT MATTER,
11 AND THEY WERE REQUIRED TO SEND MORE. THEY WERE INFORMED
12 ABOUT SENDING MORE DISCOVERY, AND IT WAS AROUND THAT
13 TIME IN OCTOBER WHEN THEY HIRED MR. ARTOM-GINZBURG.

14 MR. ARTOM-GINZBURG THEN STEPPED IN AND
15 APPARENTLY TOLD THEM NOT TO RESPOND TO ME IN ANY WAY,
16 AND THAT HE WOULD BE HANDLING THE DISCOVERY. THAT IS
17 BASED ON A CONVERSATION THAT APPARENTLY OCCURRED.
18 AROUND THAT TIME HE CALLED ME. BEFORE THAT TIME I HAD
19 NO IDEA WHO HE WAS. HE HAD NOT ENTERED HIS APPEARANCE
20 AND MY CLIENTS HAD NOT ACTUALLY TOLD ME TO WITHDRAW FROM
21 THE CASE. THAT ACTUALLY CAUSED SOME CONFUSION BECAUSE
22 HE ENTERED THE CASE NOT AS A SUBSTITUTION, BUT SIMPLY
23 ENTERED THE CASE ON HIS OWN, AND AT NO TIME DID I
24 ACTUALLY RECEIVE ANYTHING FROM HIM OR MR. YASHAYEV AND
25 SHARGEL TO ACTUALLY WITHDRAW FROM THE MATTER, HENCE WHY

1 I SUBMITTED WHAT I DID ON OCTOBER 2ND, BECAUSE AT THAT
2 TIME I JUST DID NOT KNOW WHO HE WAS AND I DID NOT KNOW
3 EXACTLY WHAT WAS GOING ON.

4 MR. ARTOM-GINZBURG HAS APPARENTLY TOLD
5 HIS CLIENTS INACCURATELY THAT I WOULD SIMPLY SEND OVER
6 MY INSURANCE INFORMATION AFTER HE CALLED ME AND HAS
7 STATED THAT I TOLD HIM THAT, YOU KNOW, I WILL DO IT
8 IMMEDIATELY. THAT IS NOT ACCURATE AT ALL. THAT WAS
9 HEARSAY THAT WAS STATED TO, I BELIEVE, MR. SHARGEL.
10 POSSIBLY MR. YASHAYEV. WHEN HE CALLED I FIRST SAID, WHO
11 ARE YOU, BECAUSE HE WAS SEEMINGLY CALLING OUT OF THE
12 BLUE, AND I ASKED FOR ANY TYPE OF PROOFS THAT HE IS NOW
13 REPRESENTING MR. SHARGEL AND MR. YASHAYEV. I ASKED, DO
14 YOU WANT TO DO A SUBSTITUTION OF AN ATTORNEY? I WAS
15 TOLD NO, THAT HE WOULD JUST BE ENTERING HIS CASE.

16 HE THEN SAID THAT HE WOULD BE SENDING A
17 LETTER OVER TO ME, WHICH I NEVER RECEIVED. HE CLAIMS
18 THAT IT WAS FAXED. MY ELECTRONIC FAX SEEMS TO WORK FINE
19 IN ALMOST EVERY SINGLE CASE EXCEPT FOR THE ALLEGED
20 LETTER OR TWO FAXES THAT HE SENT OVER, WHICH TO THIS DAY
21 I DON'T UNDERSTAND WHY HE DID NOT SIMPLY E-MAIL THEM.
22 HE ALLEGEDLY E-MAILED THEM TO MY CLIENTS. MY CLIENTS
23 SIMPLY SAID THAT -- MR. SHARGEL CLAIMED THAT I HAD BEEN
24 ON THAT E-MAIL. I WAS NOT, AND MR. ARTOM-GINZBURG
25 CONFIRMED THAT IN HIS PLEADINGS, THAT HE INITIALLY TRIED

1 TO ALLEGEDLY FAX ME, AND THEN HE SENT THE E-MAIL TO MY
2 CLIENTS. AGAIN, IN THIS DAY AND AGE I HAVE NO IDEA
3 OTHER THAN TO TRY AND CAUSE SOME ISSUE, I DON'T KNOW WHY
4 YOU COULD NOT SIMPLY HAVE E-MAILED THEM TO ME. HE
5 CLAIMED PREVIOUSLY THAT IT WAS BECAUSE HE WANTED TO MAKE
6 SURE I WOULD BE ABLE TO GET IT. BY THIS TIME, I MEAN,
7 IT'S VERY CLEAR HE SIMPLY COULD HAVE E-MAILED THOSE
8 LETTERS IF HE SENT THEM. IT'S MY UNDERSTANDING THEY
9 SIMPLY WERE NOT SENT AT THAT TIME.

10 SO AT THIS TIME, YOUR HONOR, I MEAN, I
11 FILED THE APPEAL, BOTH CLIENTS, BOTH FORMER CLIENTS, I
12 GUESS SINCE IT'S MR. SHARGEL'S UNDERSTANDING THAT HE
13 FIRED ME, EVEN THOUGH THAT WAS NEVER ACTUALLY DONE.

14 MR. YASHAYEV STATED THAT HE HAD NO IDEA
15 WHY THE APPEAL WAS WITHDRAWN. MR. SHARGEL SAYS BECAUSE
16 HE WAS FED UP WITH EVERYTHING AND THAT HE JUST WANTED IT
17 WITHDRAWN.

18 THE TIMING FOR THAT IS SUSPECT. THEY
19 CLAIM THAT IT WAS NOT AFTER A DISCUSSION WITH
20 MR. ARTOM-GINZBURG, BUT IT IS EXTREMELY SUSPECT THAT
21 AFTER THE DAY --

22 THE COURT: YOU ARE GETTING INTO
23 ARGUMENT, MR. THOMAS. I WANT YOU TO TESTIFY AND --

24 MR. THOMAS: I WILL TESTIFY THAT ON
25 OCTOBER 15TH AFTER THE HEARING ON THE ORDER DENYING THE

1 MOTION FOR CONTEMPT AND AFTER MR. ARTOM-GINZBURG SAID
2 THAT HE WOULD HAVE THE CLIENTS TELL ME TO WITHDRAW AND
3 THE FACT THAT HE WAS NOT ONLY CC'D BUT SENT THE E-MAIL
4 TWICE. MR. SHARGEL SENT IT TWICE TO WITHDRAW THE
5 APPEAL. IT'S VERY TELLING THAT I DON'T THINK
6 NECESSARILY THAT THEY WERE AS CANDID AS POSSIBLE IN
7 REGARD TO THEIR REASONS FOR WITHDRAWING THE APPEAL,
8 BECAUSE I BELIEVE, AND THIS IS ONE OF THE REASONS I
9 WANTED TO ACTUALLY SPEAK WITH MR ARTOM-GINZBURG, THAT HE
10 INSTRUCTED MY CLIENTS TO ASK TO WITHDRAW AND THAT IT WAS
11 DONE ON THEIR OWN ACCORD. AND THIS IS SOLELY SO THAT WE
12 COULD TRY AND PURSUE THIS ACTION AGAINST ME PERSONALLY,
13 BECAUSE IF THAT APPEAL WAS PENDING, HE WOULD EITHER HAVE
14 TO WORK ON IT OR THERE WOULD BE FURTHER WORK THAT LIKELY
15 COULD HAVE BEEN DONE FOR THE APPEAL.

16 THEY ASKED FOR ME TO WITHDRAW,
17 NONETHELESS, OCTOBER 15TH AND I DO SO -- PRACTICALLY I
18 DID SO AS QUICKLY AS I COULD AND IT WAS WITHDRAWN ON
19 OCTOBER 15TH, THE DAY THEY REQUESTED IT.

20 I DID, HOWEVER, THE DAY BEFORE THAT
21 SUBMIT A MOTION TO WITHDRAW AS ATTORNEY AND THAT WAS
22 DISCUSSED BRIEFLY AT THE HEARING ON OCTOBER 15TH. I
23 FELT THAT IT WAS ALMOST IMPOSSIBLE GIVEN WHAT
24 MR. ARTOM-GINZBURG WAS CLAIMING AND GIVEN WHAT HAD
25 OCCURRED THAT I COULD NO LONGER PROPERLY REPRESENT THE

1 DEFENDANTS, AND IT SEEMS THAT IT WAS THEIR UNDERSTANDING
2 THAT I WAS NO LONGER REPRESENTING THEM EITHER.

3 ALL OF THAT SAID, I BELIEVE ON ONE OF THE
4 LETTERS THAT MR. ARTOM-GINZBURG ATTACHED, HE ACTUALLY
5 SAID THAT, YOU KNOW, HE THOUGHT THAT THE PLAINTIFF IN
6 THIS MATTER -- I DON'T REMEMBER WHAT THE EXACT WORD WAS,
7 BUT HE DID NOT FIND THEM UNSAVORY EITHER. AND SO IT'S
8 STILL -- THERE IS NEVER ANY -- AT LEAST MY
9 UNDERSTANDING, ANY REASON OTHER THAN INSTRUCTIONS FROM
10 MR. ARTOM-GINZBURG TO WITHDRAW THE APPEAL.

11 I STILL FELT THAT THE APPEAL HAD MERIT.
12 I UNDERSTAND OBVIOUSLY YOUR HONOR FELT THE WAY THAT YOU
13 DID, BUT WE STILL FELT THE APPEAL HAD MERIT, AND FRANKLY
14 UNTIL MR. ARTOM-GINZBURG GOT INVOLVED, THE DEFENDANTS,
15 MY UNDERSTANDING WAS, THEY THOUGHT THE APPEAL HAD MERIT
16 AS WELL.

17 AGAIN, I BELIEVE THAT COVERS EVERYTHING
18 IN REGARDS TO THAT CASE.

19 IN REGARDS TO THE 2020 MATTER WITH
20 MR. JACOVETTI THAT WAS FILED JANUARY 9TH, 2020, AGAIN,
21 MR. JACOVETTI, ALTHOUGH HE SEEMS TO NOT REMEMBER IT NOW,
22 WE HAD BEEN ON SEVERAL CALLS, NUMEROUS CALLS, AND I
23 ACTUALLY ATTACHED SOME OF THOSE NUMEROUS CALLS WHERE
24 THERE WERE THREE-WAY CALLS BETWEEN MYSELF, MR. JACOVETTI
25 AND MR. SHARGEL THAT WERE INITIATED BY MR. JACOVETTI,

1 SOMETIMES AT A MINUTE'S NOTICE, SAYING JOSH, I'M GOING
2 TO CALL BARRY, WE ARE GOING TO DO A THREE-WAY CALL NOW.
3 SO THAT HAPPENED FREQUENTLY WHERE THOSE CALLS WOULD
4 OCCUR, AND THAT IS WHY IT IS INTERESTING THAT MR.
5 ARTOM-GINZBURG INCLUDED NONE OF THOSE PHONE CALLS IN THE
6 PLEADINGS THAT HE SUBMITTED. THOSE CALLS HAPPENED
7 FREQUENTLY, INCLUDING ACTUALLY AROUND THE TIME FOR
8 SUMMARY JUDGMENT.

9 SO IN THAT CASE, IT'S MY UNDERSTANDING
10 THAT AGAIN, MR. JACOVETTI HAD SPOKEN AT LENGTH PRIOR TO
11 FILING WITH MR. YASHAYEV AND SHARGEL THAT BASED ON
12 NUMEROUS PREVIOUS CONVERSATION AND BASED ON THE ORIGINAL
13 REASON THEY HIRED ME, THAT THEY WANTED ME TO PROCEED
14 AGAINST MR. SHELTON IN ADDITION TO MR. JACOVETTI. AND
15 ULTIMATELY THE ONLY REASON THEY WERE WITHDRAWN, THERE'S
16 NOTHING WHERE THEY MADE ANY REQUEST TO ME OVER THE
17 PHONE, THEY ADMITTED THAT THEY NEVER MADE THE REQUEST
18 DIRECTLY TO ME, THERE IS NOTHING MR. JACOVETTI OR ANYONE
19 PRESENTED SHOWING THAT HE ACTUALLY REQUESTED FROM ME.
20 HE SIMPLY SAID IT WAS OVER THE PHONE, BUT THEN HE
21 ACTUALLY STATED IN HIS TESTIMONY THAT HE DOES EVEN NOT
22 REMEMBER HAVING THAT DISCUSSION UNTIL APRIL 22ND.

23 THE FACT OF THE MATTER IS THE MOTION TO
24 AMEND WAS FILED WELL BEFORE THAT, BACK ON MARCH 6TH, AND
25 THE INTENT SIMPLY BECAUSE OF THE PRIOR FILING AND

1 BECAUSE OF THE PRIOR ORDER, THE FACT THAT THE
2 RECONSIDERATION WAS ULTIMATELY DENIED TO GO AND AMEND.
3 THAT IS WHY WE DID THE COUNTERMOTION TO REOPEN AND
4 AMEND.

5 ALL OF THAT IS BEING SAID, YOUR HONOR.
6 THAT IS WHY THE CASE HAS PROCEEDED AS THEY DID. WE
7 STILL FELT THAT THERE WAS ACTUALLY STRONG BASIS TO
8 PURSUE IT AGAINST MR. SHELTON. I BELIEVE MR. SHARGEL IN
9 BETWEEN TRYING TO GET ATTACKS AGAINST ME AND TRYING TO
10 ESSENTIALLY MISREPRESENT MY STATEMENTS ABOUT YOUR HONOR,
11 BETWEEN THOSE HE ESSENTIALLY STILL ADMITTED THAT HE FELT
12 AND AGREED THAT THE -- THERE WAS STILL ACTIONS THAT HE
13 WANTED TO PURSUE AGAINST MR. SHELTON.

14 SO IT'S MY UNDERSTANDING AND IT'S MY
15 BELIEF THAT MR. ARTOM-GINZBURG SIMPLY PUSHED THEM INTO
16 THESE STATEMENTS. AND THAT AT THIS TIME, I WOULD ASK
17 THAT THIS MATTER BE DROPPED AND IF MR. ARTOM-GINZBURG IS
18 GOING TO PURSUE AN ACTION, LET HIM TRY AND PURSUE A
19 SEPARATE ACTION. BUT THIS ACTION AT THIS POINT, I
20 REQUEST THAT YOUR HONOR WOULD KINDLY DROP WHATEVER IS
21 BEING PURSUED AT THIS TIME.

22 THE COURT: ALL RIGHT.

23 MR. ARTOM-GINZBURG, I WILL LET YOU GO
24 FIRST TO CROSS FOR MR. THOMAS.

25 MR. ARTOM-GINZBURG: THANK YOU, YOUR

1 HONOR.

2 CROSS EXAMINATION

3 BY MR. ARTOM-GINZBURG:

4 Q. WELL, MR. THOMAS, WE COME BACK TO THE SAME
5 QUESTION THAT WE HAD IN MY LETTER OF OCTOBER 2ND, 2020,
6 TO WHICH YOU MADE REFERENCE. DO YOU HAVE MALPRACTICE
7 INSURANCE?

8 A. MR. ARTOM-GINZBURG, IF YOU'D LIKE TO PURSUE
9 THAT, THE JUDGE HAS MADE VERY CLEAR HE IS NOT GOING TO
10 BE INCLUDING THAT IN THIS ISSUE. SO IF YOU ARE GOING TO
11 PURSUE THAT, I WILL CERTAINLY RESPOND TO THAT IN TIME.

12 MR. ARTOM-GINZBURG: PERMISSION TO TREAT
13 THE WITNESS AS HOSTILE.

14 THE COURT: GO AHEAD.

15 BY MR. ARTOM-GINZBURG:

16 Q. MR. THOMAS, YOU SWORE TO THE SUPREME COURT BAR
17 ON YOUR REGISTRATION IN JULY THAT YOU HAD MALPRACTICE
18 INSURANCE IN THE MINIMUM AMOUNT OF 100,000 PER INCIDENT,
19 300,000 PER SITUATION. DO YOU IN FACT HAVE MALPRACTICE
20 IN THE STATE OF PENNSYLVANIA?

21 A. TO ANSWER TO THAT QUESTION, THAT IF YOU ARE
22 ACTUALLY GOING TO REQUEST IT, THE JUDGE HAS MADE CLEAR
23 THIS IS NOT PART OF THIS HEARING. SO THAT IS NOT PART
24 OF THE ISSUES HE BROUGHT UP FOR TODAY. SO I'M GOING TO
25 STATE IF YOU ACTUALLY ASK THAT AS PART OF A SEPARATE

1 HEARING OR AS PART OF ANY OTHER TYPE OF HEARING, I WILL
2 ANSWER IT IN TIME.

3 MR. ARTOM-GINZBURG: I WOULD REQUEST THE
4 JUDGE ASK THE WITNESS TO ANSWER THE QUESTION.

5 THE COURT: WELL, GETTING AHEAD OF
6 OURSELVES A LITTLE BIT. I WAS GOING TO HEAR ARGUMENT ON
7 THIS AT THE END. I KNEW YOU SUBMITTED SOMETHING ON
8 THIS, MR. ARTOM-GINZBURG. I UNDERSTAND THERE IS AN
9 ETHICAL REQUIREMENT TO CARRY INSURANCE, BUT AS I SAID AT
10 THE START TODAY, I'M NOT A ROVING DISCIPLINARY TRIBUNAL.
11 I DON'T HAVE A BROAD DISCIPLINARY WRIT. THE SCOPE OF MY
12 PROCEEDING HERE IS TO ENSURE THE INTEGRITY OF
13 PROCEEDINGS THAT HAVE TRANSPIRED IN FRONT OF ME.

14 SO I GUESS WHAT I WOULD LIKE TO HEAR FROM
15 YOU IS WHY YOU THINK THE QUESTION OF MR. THOMAS'S
16 INSURANCE HAS ANY BEARING ON THE INTEGRITY OF THE
17 PROCEEDINGS IN EITHER OF THESE CASES THAT HAS OCCURRED
18 IN FRONT OF ME. OBVIOUSLY, AT SOME ATMOSPHERIC LEVEL
19 INSURANCE HAS AN IMPACT ON EVERY PROCEEDING IN EVERY
20 COURT, BUT HOW DOES IT HAVE A DIRECT IMPACT ON THE
21 INTEGRITY OF THESE PROCEEDINGS?

22 MR. ARTOM-GINZBURG: WELL, YOUR HONOR,
23 LET ME CONTINUE TO CROSS THE WITNESS, AND I THINK IT
24 WILL BECOME APPARENT.

25 THE COURT: OKAY.

1 MR. REO: MAY I INTERJECT FOR JUST ONE
2 SECOND? I THINK I UNDERSTAND WHERE MR. GINZBURG IS
3 GOING AS TO --

4 THE COURT: MR. REO -- NO, NO. NOT RIGHT
5 NOW. OKAY?

6 GO AHEAD -- GO AHEAD, MR. GINZBURG.

7 BY MR. ARTOM-GINZBURG:

8 Q. MR. THOMAS, DID YOU OR DID YOU NOT FILE A
9 RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT IN THE FCS
10 CAPITAL CASE?

11 A. ARE YOU TALKING ABOUT THE 2018 CASE, MR.
12 ARTOM-GINZBURG, THE ONE WHERE YOU ARE TRYING TO
13 FABRICATE ITEMS AGAINST ME? THE ANSWER IS WE SUBMITTED
14 A MOTION TO RECONSIDER ONCE WE GOT ADDITIONAL EVIDENCE
15 IN REGARDS TO THE MOTION FOR SUMMARY JUDGEMENT.

16 Q. WOULD YOU ANSWER MY QUESTION. DID YOU ANSWER
17 THE MOTION FOR SUMMARY JUDGEMENT?

18 A. WE REQUESTED TWO EXTENSIONS OF TIME.

19 Q. ARE YOU AWARE OF THE REQUIREMENTS OF RULE 50 --

20 THE COURT: MR. ARTOM-GINZBURG, I
21 UNDERSTAND YOU ARE TREATING HIM AS HOSTILE. YOU DO HAVE
22 TO LET HIM FINISH ANSWERING HIS QUESTIONS.

23 GO AHEAD, MR. THOMAS. FINISH YOUR ANSWER
24 AS TO THE QUESTION OF WHETHER YOU ANSWERED THE SUMMARY
25 JUDGMENT MOTION IN THE 2018 CASE.

1 THE WITNESS: MR. ARTOM-GINZBURG, IT WAS
2 DISMISSED. THE ORIGINAL MOTION FOR SUMMARY JUDGMENT WAS
3 DISMISSED BY THE COURT.

4 BY MR. ARTOM-GINZBURG:

5 Q. DID YOU FILE AN ANSWER TO THE AMENDED SUMMARY
6 JUDGMENT MOTION?

7 A. WE FILED A MOTION TO EXTEND TIME BECAUSE WE WERE
8 TRYING TO INCLUDE ADDITIONAL ITEMS. IT WAS DENIED, SO
9 THAT IS WHY WE FILED THE MOTION TO RECONSIDER.

10 Q. DID YOU ATTACH A PROPOSED ANSWER TO YOUR MOTION
11 TO RECONSIDER?

12 A. MR. ARTOM-GINZBURG, THE ANSWER HAD BEEN FILED
13 WELL BEFORE THAT TIME. THE ANSWER HAD ACTUALLY BEEN
14 FILED IN THIS CASE --

15 THE COURT: MR. THOMAS, THE QUESTION HE
16 IS ASKING IS WHETHER YOU FILED A PROPOSED ANSWER TO THE
17 MOTION -- WHETHER OPPOSITION -- WHATEVER WORD WE USE. I
18 DON'T WANT TO GET HUNG UP ON SEMANTICS.

19 MR. THOMAS: I'M TRYING TO ANSWER HIS
20 QUESTION DIRECTLY. IF HE WANTS TO ASK ABOUT A RESPONSE,
21 THE ANSWER IS NO, THERE WAS NO SUPPLEMENTAL ATTACHMENT
22 THAT WOULD HAVE INCLUDED A RESPONSE BECAUSE THE ITEMS
23 THAT WE WANTED TO RESPOND TO THE SUMMARY JUDGMENT WITH
24 WERE INCORPORATED IN THE MOTIONS TO RECONSIDER.

25 BY MR. ARTOM-GINZBURG:

1 Q. ARE YOU AWARE OF THE REQUIREMENTS OF RULE 56
2 REQUIRING THE FILING OF AN AFFIDAVIT IN OPPOSITION TO A
3 MOTION FOR SUMMARY JUDGMENT?

4 A. YES.

5 Q. WHY THEN IN FILING A MOTION FOR RECONSIDERATION
6 OF A DENIAL -- GRANTING OF THAT MOTION FOR SUMMARY
7 JUDGEMENT, DID YOU NOT INCLUDE SUCH AN AFFIDAVIT IN YOUR
8 MOTION FOR RECONSIDERATION?

9 A. BECAUSE IT WASN'T --

10 Q. YOU PUT YOURSELF BACK IN THE SAME PLACE AS IF
11 YOU HAD NOT MISSED THE DEADLINE?

12 A. BECAUSE IT WAS NOT A RESPONSE TO THE MOTION FOR
13 SUMMARY JUDGMENT. IT WAS MOTION TO RECONSIDER, AND HAD
14 THE RECONSIDERATION BEEN GRANTED, WE WOULD HAVE
15 SUBMITTED A COMPLETE RESPONSE.

16 Q. DID YOU TELL THE CLIENTS ABOUT THE JUDGEMENT?

17 A. YES, SEVERAL TIMES, AND THEY ACTUALLY CONFIRMED
18 IT. ALTHOUGH MR. YASHAYEV SEEMED CONFUSED ABOUT THE
19 LANGUAGE, AND MR. SHARGEL STATES THAT THERE WAS NEVER
20 ANY SPECIFIC LANGUAGE, THE ANSWER IS YES.

21 Q. DID YOU ANSWER THE FIRST ROUND OF POST-JUDGMENT
22 DISCOVERY?

23 A. WHEN YOU SAY POST-JUDGMENT DISCOVERY, THE FIRST
24 ROUND, THE ANSWER IS YES, IT WAS RESPONDED TO BASED OFF
25 OF MR. YASHAYEV AND SHARGEL'S RESPONSES. YES, THEY

1 RESPONDED.

2 Q. YET THE COURT SANCTIONED YOU.

3 A. IS THERE A QUESTION IN THERE,

4 MR. ARTOM-GINZBURG?

5 Q. THE QUESTION IS IF YOU RESPONDED TO IT, WHY DID
6 THE COURT SANCTION YOU?

7 A. I DON'T BELIEVE THE COURT ACTUALLY SANCTIONED ME
8 PERSONALLY, MR. ARTOM-GINZBURG.

9 Q. YOU FILED A SECOND MOTION FOR RECONSIDERATION.

10 A. YES.

11 Q. WHAT WERE THE GROUNDS FOR THE SECOND MOTION FOR
12 RECONSIDERATION?

13 A. FRANKLY, IF YOU WANT ME TO READ THE ENTIRE THING
14 ON TO THE RECORD I CAN, BUT --

15 Q. BRIEFLY, UNDER WHAT GROUNDS DID YOU FILE? YOU
16 FILED UNDER RULE 60, CORRECT?

17 A. I SUBMITTED UNDER THE BASIS THAT WE HAD NEW
18 INFORMATION THAT MR. YASHAYEV AND MR. SHARGEL AGREED WAS
19 MATERIAL THAT WE WANTED IN FRONT OF THE COURT TO MAKE
20 VERY CLEAR WHY THE CASE SHOULD STILL PROCEED ON ITS
21 MERITS.

22 Q. WOULD YOU EXPLAIN ON THE RECORD THE CONCEPT OF
23 EXCUSABLE NEGLIGENCE?

24 A. IT'S A LEGAL CONCEPT. I'M SURE YOU CAN LOOK IT
25 UP.

1 Q. I'M INTERESTED TO KNOW IF YOU KNOW WHAT IT IS,
2 MR. THOMAS?

3 A. ABSOLUTELY.

4 Q. WELL, PLEASE GO AHEAD.

5 A. EXCUSABLE NEGLECT IS IF SOMETHING HAPPENED --
6 YOU KNOW WHAT, I WOULD NOT WANT TO MISSTATE THE LEGAL
7 CONCLUSION OF WHAT EXCUSABLE NEGLECT IS AT THIS TIME.
8 IT'S A LEGAL CONCLUSION. THAT IS WHAT MY UNDERSTANDING
9 IS.

10 Q. DO YOU UNDERSTAND THAT IN A RECONSIDERATION
11 MOTION IN FEDERAL COURT YOU NEED TO SHOW EXCUSABLE
12 NEGLECT IN ORDER FOR THE COURT TO GRANT RECONSIDERATION
13 UNDER SECTION 60(B)(6), WHICH YOU FILED UNDER IN YOUR
14 SECOND RECONSIDERATION MOTION?

15 A. WE SUBMITTED THE STRONGEST POSSIBLE MOTIONS TO
16 RECONSIDER THAT WE COULD.

17 Q. DID YOU TELL THE CLIENTS THAT THE SUBMISSIONS TO
18 THE ANSWERS FOR POST-JUDGMENT DISCOVERY WOULD BE USED
19 AGAINST THEM?

20 A. WHAT DO YOU MEAN, WOULD BE USED AGAINST THEM?
21 THEY FULLY UNDERSTOOD, BOTH FROM ME AND FROM
22 MR. JACOVETTI EXPLAINING IT TO THEM VERY CLEARLY, THAT
23 THESE WERE GOING TO BE FOR DISCOVERY PURPOSES.

24 Q. THAT WAS NOT THEIR TESTIMONY. THAT IS WHY I'M
25 ASKING YOU THE QUESTION.

1 A. I UNDERSTAND BECAUSE -- WELL, I UNDERSTAND WHAT
2 YOUR QUESTION IS. AND I'M STATING THAT WE EXPLAINED TO
3 THEM. BOTH MYSELF AND MR. JACOVETTI EXPLAINED EXACTLY
4 WHAT THE DISCOVERY WAS GOING TO BE USED FOR.

5 Q. YOU THEN TOOK AN APPEAL OFF OF THE SECOND
6 RECONSIDERATION MOTION.

7 DO YOU UNDERSTAND -- WHAT ARE THE
8 REQUIREMENTS FOR A STAY IN FEDERAL COURT WHEN YOU TAKE
9 AN APPEAL TO THE THIRD CIRCUIT COURT OF APPEALS?

10 A. I BELIEVE THE COURT ACTUALLY STATED THIS MUCH
11 CLEARER THAN I COULD AND I WILL REFER TO HIS ORDER WHERE
12 HE STATED WHAT'S REQUIRED.

13 Q. BUT YOU WOULD AGREE THAT YOU DID NOT COMPLY WITH
14 THE REQUIREMENTS FOR A STAY BEFORE THE THIRD CIRCUIT.

15 A. I WOULD AGREE THE COURT -- THE HONORABLE JOSHUA.
16 WOLSON DENIED OUR MOTION FOR IT AND THAT THE CLIENTS
17 NEVER -- AND STATED THEY COULD NEVER AFFORD A BOND, SO
18 WE NEVER PURSUED THAT AVENUE.

19 Q. GIVEN THAT THE JUDGMENT IS A RESULT OF YOUR
20 FAILURE TO FILE A RESPONSE, THE SUMMARY JUDGMENT MOTION,
21 WOULDN'T THAT HAVE BEEN THE TIME TO CONTACT YOUR CARRIER
22 AND GET COVERAGE SO THAT IF YOUR APPEAL WAS MERITORIOUS,
23 YOU WOULD BE ABLE TO PURSUE IT WITHOUT THE CLIENTS
24 FACING RUINOUS EXECUTION PRACTICE.

25 A. I BELIEVE THAT IS WHAT YOU ARE GOING TO BE

1 TRYING TO FILE A COMPLAINT ABOUT. THAT IS MY
2 UNDERSTANDING.

3 Q. DID YOU CONTACT ANY CARRIER AS A RESULT OF YOUR
4 FAILURE TO FILE A RESPONSE TO THE MOTION FOR SUMMARY
5 JUDGEMENT?

6 A. I WILL STATE AGAIN, AT ANY POINT IF YOU ARE
7 TRYING TO ASK ABOUT A CARRIER, THAT CAN BE DEFERRED TO A
8 TIME THAT IS ACTUALLY RELEVANT IN THIS MATTER.
9 MR. ARTOM-GINZBURG -- I MEAN, I UNDERSTAND WHAT YOU ARE
10 TRYING TO DO HERE, SIR, BUT THE JUDGE HAS MADE IT VERY
11 CLEAR WHAT IS AND IS NOT RELEVANT IN THIS CASE.

12 Q. YOU STATED THAT YOUR FAX MACHINE WORKS.

13 A. YEAH, I'VE RECEIVED SEVERAL. IN FACT, I CAN
14 EVEN TELL YOU WHEN THE MOST RECENT WAS. IT'S AN
15 ELECTRONIC FAX. IT GOES TO MY CELL AND IT GOES TO THE
16 COMPUTER. IT'S AN APP.

17 Q. HOW DO YOU EXPLAIN THEN THE FACT THAT IN MY
18 RESPONSE TO YOUR FILING, I INCLUDED TWO FAX CONFIRMATION
19 SHEETS, SHOWING THAT I HAD SENT YOU THOSE LETTERS AND
20 THAT THE FAX CONFIRMATION SHOWS THAT THEY WERE RECEIVED
21 BY YOUR FAX NUMBER OF RECORD?

22 A. DID YOU PERSONALLY SEND THEM?

23 Q. YES, I DID.

24 A. AND I DIDN'T RECEIVE THEM. WAS THERE A SPECIAL
25 REASON YOU DID NOT SEND THEM TO MY E-MAIL ADDRESS?

1 BECAUSE I STILL DO NOT RECEIVE THEM. ON OCCASION I HAVE
2 ACTUALLY RECEIVED NOTICES FROM PEOPLE. SOMETIMES --
3 BECAUSE I WORK ON MODIFICATIONS A LOT, SOMETIMES I'LL
4 RECEIVE NOTICES FROM THE CLIENTS THAT THEY SENT
5 DOCUMENTS AND THEY HAVE NOT BEEN RECEIVED. USUALLY THE
6 CLIENTS ARE GOOD ENOUGH TO ACTUALLY FOLLOW UP ON A CALL,
7 SAYING I SENT YOU A FAX, DID YOU GET IT? IF I DON'T,
8 THEN I'LL TELL THEM AND THEY WILL E-MAIL IT OR THEY WILL
9 SEND IT IN SOME OTHER METHOD. YOU DID NOT DO THAT, AND
10 SIMPLY, YOU ARE TRYING TO CLAIM THAT YOU DID.

11 Q. NOW, ASK YOURSELF THIS QUESTION, MR. THOMAS.

12 WHAT IS THE DIFFERENCE BETWEEN E-MAIL AND
13 FAX THAT WOULD MAKE ME WANT TO FAX SOMETHING RATHER THAN
14 E-MAIL IT. IT IS, AFTER ALL, 2020.

15 A. I DON'T KNOW YOU PERSONALLY. I DON'T KNOW YOUR
16 MENTAL STATE. I HAVE NO IDEA WHY YOU WOULD PREFER TO
17 SEND A FAX INSTEAD OF AN E-MAIL. THAT MAKES NO SENSE TO
18 ME.

19 Q. ISN'T IT TRUE, MR. THOMAS, THAT A FAX GENERATES
20 A CONFIRMATION SHEET, SHOWING THAT A FAX HAS BEEN
21 RECEIVED, WHEREAS AN E-MAIL, AS HAS BEEN DISPUTED TODAY
22 ON MANY OCCASIONS, WE DO NOT KNOW IF THE PERSON RECEIVED
23 IT OR NOT.

24 A. YOU CAN SEND AN E-MAIL TO SHOW THAT IT HAS
25 ACTUALLY HAS BEEN READ. THERE'S CERTAINLY THE

1 CAPABILITY TO DO THAT TODAY.

2 MR. ARTOM-GINZBURG: I HAVE NO FURTHER
3 QUESTIONS FOR THIS WITNESS.

4 THE COURT: MR. REO, DO YOU HAVE ANY
5 QUESTIONS?

6 MR. REO: I DO. I HAVE SOME, YOUR HONOR.

7 THE COURT: AGAIN, I WANT TO KEEP US
8 FOCUSED ON THE ISSUES THAT ARE AT HAND, WHICH IS THE
9 INTEGRITY OF THE PROCEEDINGS IN FRONT OF ME.

10 MR. REO: I BELIEVE, THOUGH, THAT THE
11 ISSUE OF MALPRACTICE INSURANCE IS RELEVANT TO THE
12 INTEGRITY OF THE PROCEEDINGS BECAUSE IT GOES TO THE
13 CREDIBILITY OF THE WITNESS.

14 IF HE MADE A MISREPRESENTATION TO THE
15 STATE SUPREME COURT THAT HE HAS MALPRACTICE INSURANCE
16 WHEN INDEED HE DOES NOT, IT GOES DIRECTLY TO HIS
17 CREDIBILITY AT THESE PROCEEDINGS RIGHT NOW.

18 THE COURT: NO. WE ARE NOT DOING THAT.

19 I WILL TELL YOU NOW I DON'T THINK IT'S RELEVANT. YOU
20 GUYS ARE JUST TRYING TO SHORT-CIRCUIT THE PROCESS OF A
21 MALPRACTICE CLAIM. I UNDERSTAND WHY YOU WANT TO DO

22 THAT. I DON'T THINK THAT HIS HAVING MALPRACTICE

23 INSURANCE IS -- I CERTAINLY THINK IT IS RELEVANT IF YOU

24 FILE A MALPRACTICE CLAIM. IF YOU FILE A MALPRACTICE

25 CLAIM IN FEDERAL COURT, IT WILL BE PART OF THE MANDATORY

1 DISCLOSURES UNDER RULE 26(A), BUT IT'S NOT RELEVANT TO
2 THE MANDATE THAT I HAVE FOR TODAY.

3 MR. REO: UNDERSTOOD, YOUR HONOR.

4 CROSS EXAMINATION

5 BY MR. REO:

6 Q. MR. THOMAS, YOU SAID YOU HAD A PROBLEM PAYING
7 THE \$1,600 SANCTION IN THIS CASE, IS THAT CORRECT?

8 A. IT IS, ALTHOUGH I EVENTUALLY DID AND THERE IS A
9 RECEIPT OF THAT AND IT IS NOW ON THE DOCKET.

10 Q. SO IF WE CHECKED WITH YOUR BANK, WOULD THEY SAY
11 THAT YOU ISSUED A STOP PAYMENT SOMETIME IN APRIL OR DID
12 IT ONLY HAPPEN AFTER I BROUGHT THE ISSUE OF YOUR
13 NONPAYMENT TO THE ATTENTION OF THE COURT IN SEPTEMBER?

14 A. THERE WAS NEVER A STOP PAYMENT.

15 Q. SO YOU PREVIOUSLY PUT IN WRITING THAT THE COURT
16 REQUESTED A REDUCTION IN THE SANCTION FROM \$8,000 TO
17 \$1,600, IS THAT CORRECT?

18 A. HONESTLY, I DON'T REMEMBER, BUT I BELIEVE SO,
19 YES.

20 Q. YOU STATED THAT YOU ONLY MADE \$4,000 A MONTH,
21 AND THAT \$8,000 SANCTION WOULD REPRESENT TWO MONTHS OF
22 YOUR GROSS INCOME, IS THAT CORRECT, APPROXIMATELY?

23 A. ON AVERAGE APPROXIMATELY. FRANKLY NOW WITH
24 COVID, IT IS LESS.

25 Q. RIGHT.

1 SO WHEN YOU WROTE A CHECK IN APRIL FOR
2 \$1,600 AND THE MONEY DID NOT COME OUT OF YOUR ACCOUNT IN
3 APRIL, DID NOT COME OUT IN MAY, DID NOT COME OUT IN
4 JUNE, DID NOT COME OUT IN JULY, DID NOT COME OUT IN
5 AUGUST, DID YOU NOTICE THAT YOUR ACCOUNT WAS \$1,600
6 HEAVIER THAN IT SHOULD HAVE BEEN?

7 A. FRANKLY, I ASSUMED THAT THE COURT WOULD WITHDRAW
8 IT WHENEVER THEY ARE GOING TO WITHDRAW IT. I MADE SURE
9 THAT THE ACCOUNT ALWAYS HAD AT LEAST THAT MUCH IN IT.
10 BUT I HAD NO IDEA -- FRANKLY, I HAD NEVER FACED SUCH A
11 SANCTION BEFORE SO I HAD NO IDEA WHEN OR HOW THAT WAS
12 GOING TO BE WITHDRAWN.

13 Q. YOU NEVER TOOK IT UPON YOURSELF TO CHECK WITH
14 THE COURT. YOU JUST WAITED UNTIL THE COURT, ON MY
15 MOTION OR MY NOTICE, DECIDED TO INTERVENE. YOU DID NOT
16 TAKE ANY AFFIRMATIVE STEPS TO CONFER WITH THE CLERK OR
17 TALK TO THE BANK OR DO A STOP PAYMENT PRIOR TO
18 SEPTEMBER.

19 A. I NEVER DID A STOP PAYMENT. I NEVER CONFERRED
20 WITH ANYTHING. FRANKLY, LIKE I JUST SAID, I SENT IT
21 WHEN I SENT IT, AND I JUST DID NOT KNOW WHEN THEY WERE
22 GOING TO WITHDRAW. I KNEW VERY WELL THAT A LOT OF
23 COURTS ARE ACTUALLY DELAYED BECAUSE OF THIS. I FIGURED
24 IT COULD HAVE BEEN RELATED TO THAT. WHEN I SAY, "THIS,"
25 BECAUSE OF COVID-19. I THOUGHT IT MIGHT HAVE BEEN

1 BECAUSE OF THAT. I HAD NO IDEA WHY. BUT LIKE I SAID, I
2 MADE SURE THAT THE ACCOUNT ALWAYS HAD THAT AMOUNT IN
3 THERE SO WHEN IT WAS EVENTUALLY WITHDRAWN IT WOULD NOT
4 BE AN ISSUE. I ALSO ACTUALLY CALLED TO SEE IF IT COULD
5 BE DONE ELECTRONICALLY AND WAS TOLD NO, BUT FRANKLY THAT
6 WOULD HAVE BEEN A LOT EASIER.

7 Q. DO YOU HAVE A DATE AND TIME THAT YOU MADE THAT
8 CALL?

9 A. NO. I'M SURE I COULD FIND IT, BUT I DON'T
10 ACTUALLY HAVE THAT. I ACTUALLY JUST LOOKED. MY PHONE
11 RECORDS, AT LEAST ON MY CELL PHONE, DON'T GO THAT FAR
12 BACK.

13 Q. HOW LONG HAVE YOU PRACTICED LAW?

14 A. SINCE 2011, SIR.

15 Q. ALL RIGHT. NOW AS AN ATTORNEY, DO YOU BELIEVE
16 AN ATTORNEY SHOULD UNDERSTAND THE DIFFERENCE BETWEEN
17 DISCIPLINARY COUNCIL AND THE STATE BAR ASSOCIATION?

18 A. I DON'T UNDERSTAND THE QUESTION. CAN YOU MAKE
19 IT A LITTLE --

20 Q. THIS COURT ISSUED AN ORDER THAT YOU WERE TO
21 REPORT ON YOURSELF TO THE DISCIPLINARY AUTHORITIES OF
22 EVERY STATE WHERE YOU HOLD AN ACTIVE LAW LICENSE, AND
23 THEN YOU PROCEEDED TO PROVIDE TRACKING INFORMATION FOR
24 PACKETS THAT YOU SENT OFF TO STATE BAR ASSOCIATIONS.
25 AND ONLY AFTER I BROUGHT IT TO THE ATTENTION OF THE

1 COURT DID YOU REMEDY THE ISSUE BY SENDING THE PACKETS TO
2 THE DISCIPLINARY COUNCIL. IS THAT A FAIR AND ACCURATE
3 STATEMENT?

4 A. I REMEDIED THE ISSUE, NUMBER ONE, AND FRANKLY
5 BECAUSE YOU DID BRING IT UP. I LOOKED UP WHAT THE JUDGE
6 ASKED ME TO SEND TO, BECAUSE LIKE I SAID, I DID NOT
7 ACTUALLY TAKE THESE TESTS BEFORE. I LOOKED UP THE
8 ADDRESSES FOR WHERE TO SEND IT FOR EVERY SINGLE PLACE
9 THAT I WAS REPRESENTED OR IN, FRANKLY, THAT I THOUGHT
10 THE JUDGE REQUIRED. I LOOKED UP THOSE ADDRESSES ON
11 GOOGLE, COPIED THEM, PASTED THEM, PRINTED THEM ALL OUT,
12 SENT OUT ALL THE LETTERS AND ALL THE DOCUMENTS, AND MADE
13 ALL THE CDS, SO THAT WAY THEY WOULD NOT GET REAMS AND
14 REAMS OF PAPER. MADE ALL THOSE CDS AND SENT IT. NEVER
15 HAD THOUGHT THAT WAS REQUIRED TO DO SO. ONCE IT WAS
16 BROUGHT UP THAT THERE WERE WRONG ADDRESSES, I CORRECTED
17 IT AS QUICKLY AS POSSIBLE, SENT IT TO THE NEW ADDRESSES
18 AND RESOLVED THE ISSUE.

19 Q. SO DOES THE STATE BAR ASSOCIATION HAVE
20 DISCIPLINARY AUTHORITY?

21 A. MR. REO, I CORRECTED THE ISSUES AND THE MISTAKES
22 IN REGARDING SERVICE AS QUICKLY AS I COULD.

23 Q. WHEN YOU SENT A CD TO JUDGE HILLMAN IN NEW
24 JERSEY WITHOUT A COVER LETTER AND WITHOUT AN EXPLANATION
25 AND IN CONTRAVENTION OF HIS LOCAL RULE AND STANDING RULE

1 REQUIRING THAT DISKS HAVE AN EXPLANATION AND THAT DISKS
2 WITHOUT EXPLANATION WILL BE DISCARDED SUMMARILY, WERE
3 YOU HOPING HE WAS GOING TO SIMPLY DISCARD THAT DISK?

4 A. MR. REO, I HAD ABSOLUTELY NO IDEA ABOUT THAT
5 RULE UNTIL YOU SPECIFICALLY BROUGHT IT UP. FRANKLY, I'D
6 SENT THE SAME EXACT DOCUMENTS, INCLUDING THE ORDER THAT
7 HIS HONOR SIGNED REQUIRING ME TO DO SO, ON EVERY SINGLE
8 ONE OF THOSE DISKS. I SENT THAT FRANKLY TO SAVE PAPER
9 AND I SENT IT AS A DISK WITH THE ORDER ON THE DISK
10 SPECIFICALLY TO EVERY PERSON I WAS REQUIRED TO DO SO.

11 Q. SO I DON'T PRACTICE BEFORE JUDGE HILLMAN, AND
12 I'M NOT A NEW JERSEY ATTORNEY. BUT I WAS ABLE TO FIND
13 OUT THAT RULE. YOU ARE A NEW JERSEY ATTORNEY AND YOU
14 PRACTICE BEFORE JUDGE HILLMAN, BUT APPARENTLY YOU WERE
15 UNABLE TO KNOW ABOUT THAT RULE, IS THAT CORRECT?

16 A. YOU OBVIOUSLY HAVE AN INTEREST IN TRYING TO
17 CAUSE WHATEVER ISSUES YOU COULD IN THIS CASE. I HAD THE
18 INTEREST OF TRYING TO GET IT TO HIM AS QUICKLY AS
19 POSSIBLE. I SENT IT TO JUDGE HILLMAN THE SAME WAY I
20 SENT IT TO EVERYONE ELSE. NO ONE ELSE, AT LEAST ONCE
21 THEY RECEIVED IT, SEEMED TO HAVE AN ISSUE GETTING THAT
22 FORMAT.

23 Q. ARE YOU STILL UNDER AN ORDER TO SHOW CAUSE
24 BEFORE JUDGE HILLMAN IN NEW JERSEY?

25 A. I'M SORRY. CAN YOU EXPLAIN THE RELEVANCE TO

1 THIS MATTER AS TO THAT ORDER WHICH IS SPECIFICALLY FOR

2 --

3 Q. WE SET THE --

4 A. LET ME ANSWER THE QUESTION.

5 THAT ORDER INVOLVES FORECLOSURE MATTERS.

6 THAT HAS NOTHING TO DO WITH THIS ORDER.

7 Q. WELL, THE ORDER IN THIS CASE THAT I BELIEVE YOU
8 HAVE ATTEMPTED TO DEFEAT COMPLIANCE WITH OR FEIGNED
9 COMPLIANCE WITH INCLUDED MAKING CERTAIN REPRESENTATIONS
10 TO THE TRIBUNAL IN NEW JERSEY WITH BEFORE JUDGE HILLMAN,
11 AND IT SEEMS THAT FROM THE FILINGS IN THAT CASE YOU TOLD
12 JUDGE HILLMAN, YOU DID NOT RECALL OR RECOLLECT THE
13 CONTENTS OF THAT DISK. AND HE ASKED YOU IF YOU HAD BEEN
14 SANCTIONED IN THE EASTERN DISTRICT OF PENNSYLVANIA AND
15 YOU SAID, NOT TO YOUR RECOLLECTION.

16 NOW, I WONDER, DO YOU GET SANCTIONED SO
17 OFTEN THAT YOU DON'T REMEMBER WHEN YOU GET SANCTIONED?

18 A. WHEN DID THIS OCCUR WITH JUDGE HILLMAN?

19 Q. WELL, YOU DISMISSED THE CASE THAT IS PRESENTLY
20 PENDING BEFORE JUDGE HILLMAN, IS THAT CORRECT, THAT YOU
21 DISMISSED THAT CASE IN THE LAST WEEK OR THE LAST TWO
22 WEEKS?

23 A. WHAT CASE ARE YOU TALKING ABOUT, SIR?

24 Q. THE CASE THAT IS PENDING BEFORE JUDGE HILLMAN IN
25 NEW JERSEY THAT THE HONORABLE JUDGE WOLSON ORDERED YOU

1 TO FURNISH TRANSCRIPTS TO.

2 A. AND DID I COMPLY BY POSTING THEM ON THE DOCKET,
3 SIR?

4 Q. AFTER JUDGE HILLMAN ORDERED YOU TO SHOW CAUSE
5 AND GAVE YOU I THINK SEVEN DAYS TO POST A PDF ON THE
6 DOCKET, THEN YOU DID COMPLY.

7 A. EXCUSE ME, SIR.

8 Q. HAVE YOU EVER COMPLIED VOLUNTARILY AND WILLFULLY
9 OR HAVE YOU ONLY COMPLIED WHEN THE COURT HAS FINALLY
10 HELD YOUR HAND TO THE BURNER, HAVING SEEN THROUGH YOUR
11 FEIGNED ATTEMPT AT COMPLIANCE?

12 A. I DON'T UNDERSTAND HOW THAT QUESTION, WHICH IS A
13 VERY LOADED QUESTION, HAS ANY RELEVANCE TO THIS
14 WHATSOEVER.

15 Q. WELL, YOU WERE ALSO ORDERED TO GET A
16 CERTIFICATION THAT YOU WOULD FURNISH TRANSCRIPTS TO MR.
17 YASHAYEV, MR. SHARGEL AND MR. JACOVETTI. FROM THE
18 TESTIMONY YOU'VE HEARD TODAY, THOSE GENTLEMEN WERE NEVER
19 FURNISHED WITH THOSE TRANSCRIPTS BY YOU. IS THAT FAIR
20 TO SAY?

21 A. THE QUESTION IS BECAUSE THEY WERE AND THE E-MAIL
22 WAS ATTACHED SO...

23 Q. SO WHY HAS EVERYBODY TODAY EXCEPT YOURSELF
24 TESTIFIED TO THE CONTRARY?

25 IS EVERYBODY OTHER THAN YOURSELF LYING

1 TODAY?

2 A. IT'S ALSO TESTIFIED THERE WERE NUMEROUS OTHER
3 E-MAILS THEY DID NOT REMEMBER GETTING OR DIDN'T GET THAT
4 I SENT AS WELL. DO YOU WANT TO GO OVER EVERY SINGLE ONE
5 OF THOSE AS WELL?

6 Q. WELL, YOU SEEM TO HAVE PROBLEMS WITH E-MAIL
7 CHAINS. APPARENTLY AS I RECALL YOU DID NOT RECEIVE THE
8 RULE 11 DRAFT LETTER BY E-MAIL, BUT YOU INTERACTED WITH
9 THE E-MAIL CHAIN. YOU DISPUTED RECEIVING IT BY FED EX,
10 DESPITE THE FACT THAT I PROVIDED TRACKING, AND YOU ALSO
11 CLAIMED YOU DID NOT RECEIVE THE RULE 11 DRAFT MOTION BY
12 USPS FIRST CLASS. I SENT IT TO YOU THREE DIFFERENT
13 WAYS. YOU CLAIMED THAT YOU DID NOT RECEIVE IT ANY OF
14 THOSE WAYS, BUT YOU INTERACTED WITH THE E-MAIL CHAIN
15 THAT CONTAINED THE ATTACHMENT. DO YOU RECALL THAT?

16 A. NO. I DON'T RECALL WHAT YOU ARE TALKING ABOUT.
17 I RECALL THAT YOU SENT ME MANY E-MAILS AND MANY
18 DOCUMENTS.

19 Q. THE COURT NOTED THAT THE RULE 11 MOTION WAS
20 PROCEDURALLY PERFECTED AND PROPERLY SERVED, BUT THEY
21 DENIED THE RULE 11 SANCTIONS AT THAT TIME. DO YOU
22 RECALL THAT ORDER?

23 A. YES.

24 Q. OKAY. SO THAT IT WAS PROPERLY SERVED IN
25 ACCORDANCE WITH PROCEDURE. SO YOU DID RECEIVE THE

1 RULE 11 DRAFT LETTER.

2 A. I RECALL THAT THE JUDGE DENIED YOUR ORDER.

3 Q. OKAY.

4 SO YOU RECALL THE ORDER WHEREIN THE JUDGE
5 DENIED IT. DO YOU ALSO RECALL THAT IN THAT SAME ORDER
6 THE COURT NOTED SERVICE WAS PROPER?

7 A. I DON'T REMEMBER THAT SPECIFICALLY BEING STATED,
8 AND I WOULD NOT DEEM TO TRY AND REPRESENT HOW THE COURT
9 STATED COMMENTS ONE WAY OR THE OTHER ON THAT ORDER.

10 Q. IS EVERYBODY OTHER THAN YOURSELF WHO IS
11 TESTIFYING TODAY JUST LYING TO MAKE YOU LOOK BAD?

12 A. MR. REO, HOW IS THAT QUESTION RELEVANT TO THIS
13 ITEM?

14 Q. WELL, I WOULD LIKE TO KNOW BECAUSE WE HAVE HEARD
15 TESTIMONY FROM A LICENSED NEW YORK ATTORNEY; WE HAVE
16 HEARD TESTIMONY FROM TWO BUSINESSMEN, GRANTED WHO ARE ON
17 OPPOSITE SIDES OF THE CASE, BUT IF YOU ARE TELLING THE
18 TRUTH THEN ALL THREE OF THOSE MEN ARE LYING TODAY, IS
19 THAT YOUR CONTENTION, THAT ALL THREE OF THOSE MEN
20 DECIDED TO LIE TODAY?

21 A. MR. REO, OF THE ORDER SUBMITTED BY JUDGE WOLSON,
22 CAN YOU TELL ME WHICH SPECIFIC ITEM OF THOSE QUESTIONS
23 THAT QUESTION IS RELEVANT TO?

24 Q. I THINK IT GOES TO YOUR GENERAL CREDIBILITY, AND
25 I BELIEVE THAT IT GOES TO THE LACK OF CERTIFICATION THAT

1 YOU NEVER FURNISHED THE TRANSCRIPTS ON THEM.

2 A. WHICH IS NOT SPECIFIC. I'M ASKING WHICH
3 QUESTION IS THAT RELEVANT TO.

4 THE COURT: MR. THOMAS, ANSWER THE
5 QUESTION.

6 MR. THOMAS: WHAT IS THE QUESTION? IT'S
7 A VERY LOADED, JADED QUESTION.

8 THE COURT: IT MAY BE A LOADED, JADED
9 QUESTION. ANSWER IT. IF YOU WANT TO DISPUTE IT,
10 DISPUTE IT, BUT ANSWER.

11 MR. THOMAS: THE ANSWER IS NO.

12 BY MR. REO:

13 Q. SO DO YOU BELIEVE THAT YOU ARE CREDIBLE?

14 THE COURT: MR. REO, WE DON'T NEED TO GO
15 THERE.

16 MR. REO: I WILL WITHDRAW THAT. ONE MORE
17 QUESTION AND I BELIEVE I'M DONE.

18 BY MR. REO:

19 Q. MR. THOMAS, THE CERTIFICATION THAT YOU HAD YOUR
20 CLIENTS SIGN DOES NOT INCLUDE A CASE CAPTION, IS THAT
21 CORRECT?

22 A. I BELIEVE THAT'S CORRECT.

23 Q. WAS THERE A REASON YOU OMITTED A CASE CAPTION ON
24 THAT CERTIFICATION?

25 A. NO, BECAUSE GENERALLY WHEN I PUT CERTIFICATIONS

1 TOGETHER, THEY USUALLY DON'T HAVE CASE CAPTIONS.

2 Q. SO YOU JUST HAVE PEOPLE SIGN A STATEMENT THAT IS
3 NOT PERTAINING TO ANY PARTICULAR CASE?

4 A. NO. I HAVE THEM SIGN CERTIFICATIONS THAT
5 CERTIFY THE FACTS.

6 Q. ALL RIGHT.

7 DID IT OCCUR TO YOU TO HAVE THEM
8 NOTARIZED, THE CERTIFICATIONS?

9 A. THAT WAS NOT REQUIRED BY THE COURT, SO NO.

10 MR. REO: NOTHING FURTHER.

11 THE COURT: MR. SILVESTRO, DO YOU HAVE
12 ANY QUESTIONS?

13 CROSS EXAMINATION

14 BY MR. SILVESTRO:

15 Q. EARLY ON IN YOUR TESTIMONY, MR. THOMAS, YOU
16 INDICATED THAT MR. YASHAYEV AND MR. SHARGEL AND AT THAT
17 TIME MR. JACOVETTI HAD A POSITIVE CASE AND THAT IS THE
18 REASON WHY THEY HIRED YOU TO DEFEND THEM, CORRECT?

19 A. YES.

20 Q. WHY IS IT THAT YOU DID NOT FILE A TIMELY
21 RESPONSE TO THE MOTION FOR SUMMARY JUDGEMENT?

22 A. BECAUSE WE WERE TRYING TO INCLUDE ADDITIONAL
23 ITEMS. WE REQUESTED FOR AN EXTENSION OF TIME. I STATED
24 THERE WE WERE TRYING TO FILE ADDITIONAL ITEMS THAT WOULD
25 ALSO BE RELEVANT.

1 Q. WELL, HOW DOES THAT STOP YOU FROM FILING A
2 TIMELY SUMMARY JUDGMENT RESPONSE?

3 A. IT DOES NOT. ALTHOUGH OTHER THAN THE FACT THAT
4 WE SPECIFICALLY ASKED FOR A MOTION TO EXTEND TIME.

5 Q. WELL, ISN'T IT TRUE THAT YOU HAD THE RECORDINGS
6 PRIOR TO THE TIME FRAME IN WHICH YOU HAD TO FILE THE
7 SUMMARY JUDGMENT RESPONSE?

8 A. NO. IN FACT, IT'S ALREADY ON THE RECORD THAT
9 THOSE RECORDINGS WERE RECEIVED ON JANUARY 30TH.

10 Q. WELL THEN, YOU DID NOT KNOW ABOUT THE RECORDINGS
11 AT THAT TIME THAT YOU WERE SUPPOSED TO FILE THE SUMMARY
12 JUDGMENT, CORRECT?

13 A. NO, BECAUSE MY CLIENTS STATED THAT THEY HAD THEM
14 IN THEIR POSSESSION. THEY WERE GOING TO SEND THEM TO ME
15 AS SOON AS THEY COULD. IN FACT, THAT IS WHY ON
16 JANUARY 27TH THERE IS A MOTION TO RECONSIDER FILED THAT
17 REFERENCED THEM, EVEN THOUGH I HAD NOT ACTUALLY RECEIVED
18 THEM UNTIL THE 30TH.

19 Q. DID YOU SEND ANY E-MAILS OR ANY CORRESPONDENCE
20 TO YOUR CLIENTS AT THAT TIME TELLING THEM HOW URGENT IT
21 WAS THAT THEY GET YOU THOSE THINGS BECAUSE YOU NEEDED TO
22 INCLUDE THAT IN THE RESPONSE TO SUMMARY JUDGMENT?

23 A. YES. THERE WERE SEVERAL DISCUSSIONS ABOUT IT.
24 THEY SAID THEY WOULD GET THEM TO ME. I FILED THE MOTION
25 TO RECONSIDER THAT REFERENCED THEM, AND THEN THEY GOT

1 THEM TO ME A FEW DAYS AFTER THE MOTION WAS FILED.

2 Q. SIR, PLEASE ANSWER MY QUESTION, NOT THE ONE YOU
3 WANT TO ANSWER.

4 DID YOU SEND ANY -- DID YOU SEND ANY
5 CORRESPONDENCE VIA ELECTRONIC MAIL OR REGULAR MAIL THAT
6 INDICATED THAT YOU NEEDED THOSE ITEMS TO INCLUDE IN YOUR
7 SUMMARY JUDGMENT RESPONSE AND TELLING THEM SPECIFICALLY
8 WITHIN WHAT TIME FRAME IT HAD TO BE SENT TO YOU?

9 A. THERE WAS DISCUSSION OVER THE PHONE WHERE IT
10 DISCUSSED THAT I NEEDED THEM. THERE IS NO E-MAIL PRIOR
11 TO THE MOTION TO CONSIDER BEING SUBMITTED. THAT WAS NOT
12 TO MR. SHARGEL. AND LET ME LOOK UP MR. JACOVETTI'S BOTH
13 E-MAILS SO I CAN ANSWER THE QUESTION FULLY. I'M TRYING
14 TO GIVE YOU THE ANSWER.

15 Q. MR. THOMAS, ARE YOU NOT CONCERNED WHEN YOU TAKE
16 ON A CLIENT THAT YOU WANT TO AVOID MALPRACTICE?

17 A. SIR, THE MOTION -- THERE IS ACTUALLY AN E-MAIL
18 FROM MR. JACOVETTI REGARDING THE MOTION TO RECONSIDER
19 BACK ON JANUARY 10TH, AND THAT LIKELY RESULTED IN A
20 PHONE CALL WITH MR. JACOVETTI ON THAT MATTER. IT'S NOT
21 ON THE RECORD, BUT THERE WAS AN E-MAIL FROM HIM
22 REGARDING THAT QUESTION REGARDING THIS. SO THE ANSWER
23 IS YES, IT WAS DISCUSSED JANUARY 10TH. THERE WERE PHONE
24 CALLS REGARDING THOSE ISSUES AS WELL THAT I NEEDED THE
25 RECORDINGS.

1 Q. SIR, YOU KEEP TALKING ABOUT THE MOTION FOR
2 RECONSIDERATION. I'M ASKING YOU, WAS THERE ANY URGENCY
3 IN ANY CORRESPONDENCE THAT YOU SENT TO YOUR CLIENTS,
4 INCLUDING MY CLIENT, MR. JACOVETTI, WHICH INDICATED THAT
5 THEM -- THAT ALL THREE OF THEM, BY FAILING TO GIVE YOU
6 CERTAIN RECORDINGS, WAS HAMPERING YOUR ABILITY TO FILE A
7 RESPONSE TO SUMMARY JUDGMENT?

8 A. I RESPONDED TO THAT NUMEROUS TIMES, SAYING THAT
9 THERE WERE PHONE CALLS, BUT THERE IS NO SPECIFIC E-MAIL
10 CORRESPONDENCES ON THAT MATTER.

11 Q. IF YOU HAD TO MISS THE FILING DATE FOR THE
12 RESPONSE TO SUMMARY JUDGMENT, AND YOU HAD TO TELL YOUR
13 CARRIER ABOUT IT, WOULDN'T YOU WANT TO HAVE A PIECE OF
14 CORRESPONDENCE WHICH WOULD INDICATE THAT YOU INFORMED
15 THEM THAT YOU HAD TO FILE BY A CERTAIN DATE AND IT WAS
16 THEIR FAULT THAT YOU DIDN'T?

17 A. I WAS WAITING WITH A MOTION TO EXTEND -- MOTION
18 TO EXTEND PENDING. I WAS WAITING FOR THAT TO BE RULED
19 ON. AND I WAS WAITING FOR THEIR DOCUMENTS TO COME SO
20 THAT WAY I COULD ACTUALLY SUBMIT THEM AS PART OF OUR
21 RESPONSE, SIR.

22 Q. WHEN YOU CLASSIFIED THEIR CASE AS A POSITIVE
23 CASE WHEN YOU FIRST TOOK IT, DID YOU KNOW ABOUT THE
24 RECORDINGS?

25 A. NO.

1 Q. OKAY. WELL, IF YOU KNEW THAT IT WAS A POSITIVE
2 CASE, IT WOULD SEEM THAT EVEN UNDER THOSE CIRCUMSTANCES
3 YOU WOULD HAVE HAD ENOUGH AMMUNITION TO RESPOND TO THE
4 MOTION FOR SUMMARY JUDGEMENT, RIGHT?

5 A. IF WE HAD EVEN STRONGER EVIDENCE, THERE IS NO
6 REASON TO SUBMIT A PARTIAL REPLY, SIR.

7 Q. DIDN'T YOU BELIEVE THAT LEGALLY IT WAS -- THE
8 COMPLAINT WAS DEFICIENT BECAUSE IT WASN'T AN INDIVIDUAL
9 THAT RECEIVED THE PHONE CALL BUT A BUSINESS? ISN'T THAT
10 ONE OF THE DEFENSES?

11 A. CAN YOU REPHRASE THAT QUESTION. BECAUSE I THINK
12 I KNOW THE ANSWER, BUT I WANT TO MAKE SURE I AM
13 ANSWERING THE QUESTION YOU ARE ASKING. CAN YOU REPHRASE
14 THAT, PLEASE.

15 Q. WHAT WERE THE DEFENSES -- LET ME ASK IT THIS
16 WAY.

17 WHAT WERE THE DEFENSES TO THE COMPLAINT
18 THAT YOU WERE GOING TO ASSERT?

19 A. THEY WERE SPECIFICALLY ENUMERATED IN THE ANSWER
20 THAT WAS SUBMITTED TO THE AMENDED COMPLAINT AND IN THE
21 MOTIONS TO DISMISS.

22 Q. OKAY. WASN'T ONE OF THEM THAT IT WAS NOT AN
23 INDIVIDUAL THAT MADE THE PHONE CALL?

24 A. AGAIN, I DON'T WANT TO MISANSWER THIS QUESTION.
25 CAN I TRY AND CLARIFY --

1 Q. IT'S A SIMPLE QUESTION, SIR. WASN'T THAT ONE OF
2 YOUR DEFENSES, THAT IT WAS NOT AN INDIVIDUAL THAT HAD
3 RECEIVED THE PHONE CALL?

4 A. YOU MEAN THAT THE PHONE NUMBER THAT WAS CALLED
5 IS A BUSINESS NUMBER, THEN THE ANSWER IS YES.

6 Q. OKAY. WOULDN'T THAT IN AND OF ITSELF BE A
7 DEFENSE THAT YOU SHOULD HAVE BROUGHT UP AS A GENUINE
8 ISSUE OF MATERIAL FACT IN A RESPONSE TO SUMMARY
9 JUDGMENT?

10 A. AND IT WAS PLED ALREADY.

11 Q. I DIDN'T ASK YOU THAT, SIR. IS THAT NOT AN
12 APPROPRIATE RESPONSE TO A SUMMARY JUDGMENT MOTION AND
13 WOULD THAT NOT HAVE CONSTITUTED A GENERAL ISSUE OF
14 MATERIAL FACT?

15 A. IT WOULD HAVE BEEN ONE ITEM TO BRING UP AND WAS
16 GOING TO BE BROUGHT UP, YES.

17 Q. WELL, DO YOU THINK THAT COMPLETELY AVOIDING EVEN
18 USING THAT AS YOUR ONE DEFENSE TO SUMMARY JUDGMENT, DO
19 YOU THINK THAT THAT WAS A GOOD STRATEGIC MOVE?

20 A. IN RETROSPECT I CAN HONESTLY SAY NO.

21 Q. OKAY. BUT YOU KNEW THAT INFORMATION PRIOR TO
22 THE DEADLINE TO FILE YOUR SUMMARY JUDGMENT RESPONSE,
23 DIDN'T YOU?

24 A. THAT IS WHY WE FILED A MOTION TO EXTEND TIME TO
25 TRY TO GET THOSE RECORDINGS TO INCLUDE THEM AS WELL.

1 Q. MR. THOMAS, I AM ASKING YOU A SIMPLE YES OR NO
2 QUESTION. DID YOU NOT KNOW ABOUT THAT VIABLE DEFENSE
3 AND THE CREATION OF A GENUINE ISSUE OF MATERIAL FACT
4 PRIOR TO FILING YOUR MOTION FOR RECONSIDERATION?

5 A. I'M SAYING IT WAS ALREADY RAISED AS A DEFENSE IN
6 THE ANSWER AND IN THE MOTIONS TO DISMISS, SO THE ANSWER
7 IS YES.

8 Q. SO IN OTHER WORDS, YOUR ANSWER IS THAT IT WAS
9 NOT NECESSARY TO FILE A RESPONSE TO SUMMARY JUDGMENT
10 MOTION.

11 A. NOT EVEN REMOTELY MY ANSWER. THAT'S A COMPLETE
12 MISCHARACTERIZATION OF IT, SIR.

13 Q. OKAY. DO YOU REMEMBER FILING IN THE 2020 CASE
14 PLAINTIFFS' MOTION TO REOPEN CASE PURSUANT TO RULE 60(B)
15 AND TO AMEND THE COMPLAINT PURSUANT TO FEDERAL RULE OF
16 CIVIL PROCEDURE 15(A) AND IN OPPOSITION TO THE MOTION
17 FOR SANCTIONS. DO YOU REMEMBER FILING THAT?

18 A. YES.

19 Q. AND DO YOU REMEMBER SPECIFICALLY IN THAT FILING,
20 PARAGRAPH NUMBER 12, YOU INDICATED SPECIFICALLY MY
21 REMOVING THE PARTIES THAT THE PRIOR JUDGMENT WAS ENTERED
22 AGAINST AND ONLY PROCEEDING WITH THE PARTIES THAT HAVE
23 CLAIMS AGAINST DEFENDANTS? DO YOU REMEMBER ASSERTING
24 THAT?

25 A. HONESTLY, I DON'T. I'M LOOKING AT THE DOCKET

1 WHERE IT IS SUBMITTED, BUT IF YOU'RE STATING IT IS IN
2 THE ACTUAL PLEADING, I'LL AGREE THAT IT'S LIKELY IN THE
3 PLEADING.

4 Q. I HAVE TIME. WHY DON'T YOU TAKE A LOOK AT IT
5 AND JUST CONFIRM THAT WHAT I JUST READ IS AN ACCURATE
6 DEPICTION OF WHAT YOU PRESENTED TO THE COURT.

7 A. ARE YOU TALKING ABOUT THE DOCUMENT FILED ON
8 MARCH 12TH?

9 Q. TALKING ABOUT THE DOCUMENT FILED MARCH 6TH OF
10 '20.

11 A. YES.

12 Q. LOOK AT PARAGRAPH 12.

13 A. HOLD ON. I'M WORKING ON IT. AS SUCH PLAINTIFF
14 REQUESTS THAT THE COMPLAINT BE AMENDED PURSUANT TO FRCP
15 15(A)(2), WHICH STATES A PARTY MAY AMEND ITS PLEADING
16 ONLY WHEN THE APPELLATE -- I'M SORRY. THAT'S
17 PARAGRAPH 11.

18 PARAGRAPH 12: THE AMENDED COMPLAINT WILL
19 RESPOND TO ALL ALLEGED ISSUES -- BY REMOVING THE PARTIES
20 THAT THE PRIOR JUDGMENT WAS ENTERED --

21 COURT REPORTER: PLEASE REPEAT THAT.

22 MR. THOMAS: SURE. SORRY.

23 THE AMENDED COMPLAINT -- YOU KNOW WHAT?
24 I'LL JUST ANSWER WITH YES, THAT IS WHAT IT SAYS.

25 Q. OKAY. AND WHEN YOU INDICATED A PRIOR JUDGMENT,

1 YOU WERE REFERRING SPECIFICALLY TO THE JUDGMENT IN THE
2 2018 ACTION, WERE YOU NOT?

3 A. CORRECT.

4 Q. OKAY. AND WHEN WAS THAT JUDGMENT?

5 A. WHICH JUDGMENT ARE YOU REFERRING TO?

6 Q. THE JUDGMENT IN THE 2018 CASE, THAT IS THE
7 SISTER CASE OF MR. JACOVETTI'S ACTION.

8 A. WHICH JUDGMENT ARE YOU REFERRING TO?

9 Q. THE JUDGMENT THAT HAS RESULTED IN A \$54,000
10 OBLIGATION TO MR. YASHAYEV AND MR. SHARGEL.

11 A. DECEMBER 11TH.

12 Q. OKAY. AND THAT WAS PRIOR TO FILING THE
13 COMPLAINT IN THE JACOVETTI ACTION, WASN'T IT?

14 A. WE STILL FILED FOR A MOTION FOR RECONSIDERATION
15 AS WELL. AND IF THE MOTION FOR RECONSIDERATION HAD BEEN
16 GRANTED, THEN THE ORDER ACTUALLY WOULD HAVE BEEN VACATED
17 OR AT LEAST OVERTURNED.

18 Q. SIR, IN PARAGRAPH 12 OF YOUR SUBMISSION ON MARCH
19 6TH, WERE YOU NOT REFERRING TO THE FATAL DEFECT WITH
20 REGARD TO THE COMPLAINT, HAD TO DO WITH RES JUDICATA
21 INVOLVING MR. YASHAYEV AND MR. SHARGEL?

22 A. REPEAT THE QUESTION.

23 Q. WHAT WAS THE DEFECT THAT YOU WERE REMOVING THAT
24 YOU REFERRED TO IN PARAGRAPH 12 OF YOUR 3/6 SUBMISSION?

25 A. AS YOU'VE STATED, IT WAS REMOVING MR. YASHAYEV

1 AND MR. SHARGEL.

2 Q. AND WOULDN'T THAT BE BECAUSE IT WAS SUBJECT TO
3 RES JUDICATA?

4 A. IT WAS BECAUSE THE MOTION FOR CONSIDERATION OF
5 THE SUMMARY JUDGMENT BEING GRANTED WAS ULTIMATELY
6 DENIED. THAT IS WHY WE ULTIMATELY REMOVED THEM FROM THE
7 CASE, SIR.

8 Q. ANSWER MY QUESTION, YES OR NO. THE DEFECT THAT
9 YOU ARE ADDRESSING IN YOUR PARAGRAPH 12 WAS RES
10 JUDICATA, WAS IT NOT?

11 A. THAT IS NOT --

12 Q. YES OR NO?

13 A. THAT IS NOT WHAT IT SAYS, SIR.

14 Q. OKAY. THE DEFECT THAT YOU REFERRED TO IN
15 PARAGRAPH 12, LET ME ASK IT THIS WAY, DIDN'T THAT DEFECT
16 ALSO EXIST WHEN YOU FILED THE COMPLAINT IN JANUARY OF
17 2020?

18 A. ONCE AGAIN IT WAS FILED TO INCLUDE ALL THE
19 PARTIES, AND THEN ONCE THE MOTION FOR RECONSIDERATION
20 WHICH WAS DENIED ON JANUARY 29TH, THEN WE FILED TO AMEND
21 THE MOTION, TO AMEND THE COMPLAINT.

22 Q. SO AT THE TIME YOU FILED THE COMPLAINT IN THE
23 JACOVETTI ACTION YOU DID NOT HAVE CONCERN THAT THE
24 MOTION WAS GOING TO BE -- THE MOTION TO RECONSIDER WAS
25 GOING TO BE DENIED AND THEREFORE YOU WOULD HAVE TWO

1 DEFECTIVE PLAINTIFFS IN YOUR ACTION?

2 A. NO, OR ELSE YOU WOULD NOT HAVE INCLUDED THEM IN
3 THE ACTION.

4 Q. SIR, YOU INDICATED THAT YOU HAD SENT -- STRIKE
5 THAT.

6 WOULD YOU AGREE WITH ME THAT THE MARCH
7 27, 2020 ORDER FROM JUDGE WOLSON REQUIRED YOU TO SHOW MY
8 CLIENT, MR. SHARGEL, AND MR. YASHAYEV THREE THINGS:
9 NUMBER ONE, THE ORDER; NUMBER TWO, THE MEMORANDUM; AND
10 NUMBER THREE, THE TRANSCRIPT, CORRECT?

11 A. THAT IS WHAT WAS SUBMITTED IN THE ORDER, YES.

12 Q. AND YOUR TESTIMONY TODAY OUT OF THE BLUE NOW
13 INDICATES THAT YOU DID IN FACT SEND IT TO ALL THREE OF
14 THOSE INDIVIDUALS, CORRECT?

15 A. OUT OF THE BLUE, SIR. IT WAS ALREADY ON THE
16 RECORD MONTHS AGO.

17 Q. DID YOU HAVE ANY -- DID YOU SEND ANY
18 CORRESPONDENCE TO THEM TO CONFIRM THEIR RECEIPT OF
19 THAT -- THOSE ITEMS?

20 A. WE LITERALLY HAD A CALL IMMEDIATELY AFTER THAT.

21 Q. OKAY. WERE YOU AWARE -- FIRST OF ALL, DID YOU
22 DRAFT THE CERTIFICATION?

23 A. YES.

24 Q. OKAY. AND WERE YOU AWARE IN THE JUDGE'S ORDER
25 THAT YOU WERE SPECIFICALLY SUPPOSED TO ATTEST THAT YOU

1 HAD NOT ONLY SHOWED, NOT ONLY SENT, BUT WENT OVER THE
2 THREE ITEMS THAT I JUST REFERRED TO, THAT THAT WAS A
3 REQUIREMENT THAT YOU REPRESENT IN THE CERTIFICATION,
4 CORRECT?

5 A. THAT WAS THE POINT OF THE PHONE CALL, TO DISCUSS
6 IT AFTER IT WAS SENT, SIR.

7 Q. WELL, SIR, LET ME ASK -- I'M GOING TO READ FROM
8 THE JUDGE'S ORDER: HE, MEANING YOU, MUST FIRST SUBMIT
9 TO THE COURT A STATEMENT IN WRITING SIGNED BY EACH
10 CLIENT THAT INTENDS TO CONTINUE TO EMPLOY HIM AS COUNSEL
11 STATING THAT THE CLIENT HAS RECEIVED A COPY OF THIS
12 ORDER, THE ACCOMPANYING MEMORANDUM, AND THE TRANSCRIPT,
13 AND HAS DISCUSSED THEM WITH THOMAS AND WANTS TO CONTINUE
14 TO EMPLOY THOMAS AS COUNSEL IN THIS CASE.

15 WHERE IN THE CERTIFICATION DOES IT
16 CONFIRM THAT THAT OCCURRED, SPECIFICALLY WITH REGARD TO
17 THE RECEIPT, AND ALSO WITH REGARD TO THE FACT THAT YOU
18 DISCUSSED IT?

19 A. THEY RECEIVED IT BECAUSE IT SAYS IN THE
20 CERTIFICATION I RECEIVED THE DOCUMENTS AND WE DISCUSSED
21 IT THE DAY AFTER IT WAS SENT AND YOUR CLIENTS HAVE
22 CONFIRMED THAT THEY RECEIVED AND DISCUSSED IT THE DAY
23 AFTER IT WAS SENT.

24 Q. SO WHERE IN THE CERTIFICATION DOES IT SAY THAT
25 THEY ADMITTED THAT THEY RECEIVED IT?

1 A. DO YOU HAVE THE CERTIFICATION IN FRONT OF YOU?

2 Q. I DO. THE ONLY THING THAT I SEE IS IT SAYS WE
3 HAVE REVIEWED. IT DOES NOT SAY ANYTHING ABOUT WHAT THEY
4 RECEIVED OR WHAT YOU DISCUSSED. SHOW ME IN THE
5 CERTIFICATION WHERE IT INDICATES THAT THOSE TWO BOXES
6 WERE CHECKED.

7 A. THEY COULD NOT HAVE REVIEWED THE DOCUMENTS
8 WITHOUT RECEIVING THEM, SIR. IT DOES NOT SAY WE
9 DISCUSSED THE MATTER. IT DOES NOT SAY -- IT SAYS THAT
10 WE REVIEWED THEM AND THEY SIGNED IT. THAT IS WHEN IT
11 WAS SUBMITTED, AFTER THE CALL OCCURRED. I E-MAILED IT
12 TO THEM AND THEN WE HAD THE CALL THE NEXT DAY.

13 Q. SIR, IS IT YOUR TESTIMONY THAT THE CERTIFICATION
14 THAT HAS BEEN SUBMITTED TO THE COURT THAT THAT IS IN
15 COMPLIANCE WITH PARAGRAPH NUMBER 5 OF THIS COURT'S
16 ORDER?

17 A. YES.

18 Q. YOU INDICATED FOR THE FIRST TIME IN YOUR
19 TESTIMONY THAT POST-JUDGMENT DISCOVERY WAS DISCUSSED
20 WITH BOTH MR. SHARGEL AND MR. YASHAYEV ALONG WITH MY
21 CLIENT. IS THAT THE WAY THINGS HAPPENED?

22 A. YES. IN FACT, MR. JACOVETTI EXPLAINED TO THEM,
23 I THINK, ON THE SECOND OR THIRD TIME THAT WE HAD THAT
24 CALL, THAT POST-JUDGMENT DISCOVERY, EXACTLY WHAT IT IS,
25 AND WE ACTUALLY DISCUSSED THE ISSUE OF THE BOND AS WELL.

1 Q. I DON'T RECALL ANY TESTIMONY FROM EITHER
2 MR. SHARGEL OR MR. YASHAYEV WHICH INDICATED THAT SUCH A
3 PHONE CALL OCCURRED. WHY DID YOU NOT CROSS EXAMINE THEM
4 ON THAT?

5 A. ACTUALLY, THEY DID STATE THAT IT OCCURRED. THEY
6 STATED IT OCCURRED IN JULY. THEY STATED THAT IS WHEN IT
7 OCCURRED. AND THEY EVEN ADMITTED THAT THAT IS WHEN THE
8 BOND WAS DISCUSSED, AND THEY ADMITTED THAT THERE WAS AN
9 E-MAIL THEY RECEIVED IN APRIL REGARDING POTENTIALLY
10 TRYING TO STAY THE DISCOVERY AS WELL. SO THEY ADMITTED
11 THAT THE CALL ACTUALLY OCCURRED IN JULY ON THAT ISSUE.

12 Q. WAS MR. JACOVETTI ON THE LINE?

13 A. FRANKLY, I THINK HE ACTUALLY INITIATED THE CALL.

14 Q. IF THIS WAS A -- IF THIS WAS A CALL ALLEGEDLY
15 ABOUT A JUDGMENT THAT MR. JACOVETTI WAS NO LONGER A PART
16 OF THE ACTION, WHY WOULD HE BE ON THE CALL?

17 A. BECAUSE HE WAS ON THE CALL ALMOST EVERY SINGLE
18 TIME WE ALL SPOKE. AS MR. SHARGEL STATED, THEY SPOKE A
19 LOT. AND HE, MR. JACOVETTI, USUALLY SET UP THE
20 THREE-WAY CALL. HE WOULD CALL ME FIRST, WE WOULD TALK,
21 AND THEN HE WOULD USUALLY SET UP A THREE-WAY CALL AFTER
22 THAT. THAT IS ALMOST ALWAYS HOW THE CONVERSATIONS
23 OCCURRED.

24 Q. IS IT YOUR TESTIMONY THAT MR. JACOVETTI --
25 STRIKE THAT.

1 MR. REO: NO MORE QUESTIONS, YOUR HONOR.

2 THE COURT: I HAVE A FEW QUESTIONS, AND
3 THEN I WANT TO WRAP UP.

4 BY THE COURT:

5 Q. MR. THOMAS, WHEN DID YOU LEARN ABOUT THE
6 RECORDINGS THAT FORM THE BASIS OF THE -- I GUESS, THE
7 COMPLAINT IN THE RICO ACTION AND ALSO THEN AT SOME POINT
8 THE RECONSIDERATION MOTION?

9 A. IT WAS AROUND CHRISTMAS. HONESTLY IT'S AROUND
10 LATE DECEMBER, EARLY JANUARY, THEY SAID THEY MIGHT
11 EXIST. AND THEN MR. -- I BELIEVE IT WAS MR. SHARGEL
12 ACTUALLY TOLD ME SEVERAL OF THE FACTS, WHICH IS WHAT I
13 PUT INTO THE JANUARY 27TH MOTION, BUT HE DID NOT
14 ACTUALLY SEND ME THOSE RECORDINGS UNTIL JANUARY 30TH.

15 Q. SO THERE ARE A COUPLE OF THINGS I WANT TO FOLLOW
16 UP ON THERE. YOU SAID YOU LEARNED ABOUT THEM -- AND I
17 UNDERSTAND LIKE MEMORIES GET FUZZY, SO LATE DECEMBER,
18 JANUARY TIME FRAME. I THINK YOU TESTIFIED EARLIER THAT
19 THE REASON YOU WERE SEEKING THE EXTENSION FOR SUMMARY
20 JUDGMENT WAS SO THAT YOU COULD GET THAT INFORMATION IN
21 FRONT OF ME. RIGHT? IS THAT WHAT YOU'RE SAYING?

22 A. SO THAT WAS ACTUALLY I BELIEVE THE SECOND TIME.
23 SO AFTER -- IT WAS AFTER -- I CAN ACTUALLY NARROW IT
24 DOWN A LITTLE TIGHTER. IT WAS ACTUALLY AFTER YOU DENIED
25 THE ORIGINAL MOTION FOR SUMMARY JUDGEMENT. AND THEN

1 WHEN I INFORMED THEM THAT THE ORIGINAL ONE HAD BEEN
2 DENIED, IT WAS AFTER THAT TIME. SO I DON'T KNOW IF IT
3 WAS DECEMBER --

4 Q. WHEN YOU SAY I DENIED IT, YOU MEAN WHEN I STRUCK
5 IT?

6 A. CORRECT.

7 Q. I STRUCK IT IN EARLY OCTOBER.

8 A. CORRECT.

9 Q. AND MR. REO FILED THE SAME DAY. HE FILED HIS
10 AMENDED MOTION. YOU FILED YOUR MOTION FOR AN EXTENSION
11 OCTOBER 22ND.

12 A. CORRECT.

13 Q. SO YOU DIDN'T KNOW ABOUT THE RECORDINGS AT THAT
14 POINT.

15 A. HONESTLY, I THINK I DID, TO BE HONEST, BUT LET
16 ME DOUBLE-CHECK. LET ME SEE WHAT THE BASIS WAS.

17 Q. THE BASIS WAS VERY SHORT. IT SIMPLY SAID YOU
18 NEEDED MORE TIME AND THAT YOU WERE GOING TO -- IN TWO
19 WEEKS YOU WOULD BE ABLE TO RESPOND. THAT WAS ALL THE
20 TIME YOU NEEDED. IT WAS THE SAME LETTER YOU HAD
21 SUBMITTED TO ME ONCE BEFORE.

22 A. RIGHT. I DON'T REMEMBER IF THAT WAS THE REASON
23 FOR THE EXTENSION AT THAT TIME, YOUR HONOR. I SEEM TO
24 REMEMBER IT WAS AROUND THE CHRISTMASTIME ERA THAT WE
25 ACTUALLY NEEDED IT, BUT I DON'T REMEMBER IF THAT WAS THE

1 TIME. IT MIGHT HAVE BEEN EARLIER THAN THAT.

2 Q. IN FACT, I RULED ON SUMMARY JUDGMENT IN EARLY TO
3 MID DECEMBER, LIKE THE 11TH, ISN'T THAT RIGHT?

4 A. CORRECT.

5 Q. SO YOU STILL BY THAT POINT DIDN'T KNOW ABOUT THE
6 RECORDINGS, RIGHT?

7 A. AGAIN, I DON'T REMEMBER THE EXACT TIME. I
8 THOUGHT IT WAS AROUND THAT TIME, BUT IT MIGHT HAVE BEEN
9 AFTER. I BELIEVE THAT MAY BE CORRECT.

10 Q. HELP ME OUT HERE BECAUSE THE MOTION FOR
11 RECONSIDERATION YOU FILED, THE FIRST ONE, IT DOES NOT
12 MENTION THE RECORDINGS, RIGHT?

13 A. WELL, IT DOES, ACTUALLY. IT'S JANUARY 27TH.
14 IT'S THREE DAYS BEFORE THE RECORDINGS. SO IT ACTUALLY
15 DOES MENTION THEM. I BELIEVE IT DOES, YOUR HONOR.

16 Q. I HAVE TO TELL YOU -- I MEAN, I HAVE NOT
17 REFRESHED MYSELF REAL RECENTLY ON IT. I DON'T REMEMBER
18 IT BEING IN THERE.

19 A. LET ME DOUBLE-CHECK.

20 Q. I GUESS MY SORT OF -- IN FACT, I DON'T EVEN
21 REMEMBER IT BEING BASED ON NEW EVIDENCE. WHAT IT WAS
22 FROM MY PERSPECTIVE, MR. THOMAS, AND TELL ME IF YOU
23 THINK THIS IS WRONG, IT WAS YOUR ATTEMPT TO ARGUE WHAT
24 YOU WOULD HAVE ARGUED IN YOUR OPPOSITION TO SUMMARY
25 JUDGMENT.

1 A. IT WAS CERTAINLY THAT IN PART. I'M NOT DENYING
2 THAT, THAT THAT WAS CERTAINLY WHAT IT WAS IN PART, YES.

3 I AM LOOKING TO TRY AND SEE IF IT WAS --
4 THE SPECIFIC REFERENCE, BUT I WILL LET --

5 Q. I WILL TELL YOU I JUST CALLED IT UP. I RAN A
6 SEARCH FOR THE WORD "RECORDING" AND NOTHING IS IN THERE.
7 IT DOES NOT COME UP AT ALL.

8 A. I DON'T SEE IT.

9 Q. OKAY.

10 A. I BELIEVE THAT -- I MIGHT BE THINKING OF A LATER
11 PLEADING THEN, BUT I KNOW THEY WERE MENTIONED IN A
12 PLEADING VERY SOON AFTER THAT.

13 Q. OKAY.

14 A. IT MIGHT HAVE ACTUALLY BEEN THE OPPOSITION TO
15 THE MOTION FOR JUDGMENT IN THE OTHER CASE, BUT OKAY.

16 Q. YOU DID NOT FILE AN OPPOSITION TO THE MOTION FOR
17 JUDGMENT IN THE OTHER CASE, WHICH IS WHY I GRANTED IT,
18 RIGHT?

19 A. AGAIN, I KNOW THAT IT WAS -- AT SOME POINT VERY
20 SOON AFTER THAT WE ACTUALLY SUBMITTED DOCUMENTS
21 REGARDING THOSE RECORDINGS. I DON'T REMEMBER EXACTLY
22 WHEN IT WAS. I CAN GO BACK AND REVIEW THEM, BUT I KNOW
23 THEY WERE SUBMITTED.

24 Q. OKAY.

25 IN THE SHELTON MATTER, ONE OF THE ISSUES

1 RAISED IN THE SUMMARY JUDGMENT MOTION WAS THAT YOU DID
2 NOT RESPOND TO THE DISCOVERY REQUESTS THAT WERE SERVED
3 IN THAT CASE, IS THAT RIGHT?

4 A. IT WAS AN ISSUE RAISED, YES.

5 Q. DID YOU RESPOND TO DISCOVERY REQUESTS IN THAT
6 CASE? I'VE NEVER SEEN YOU COME BACK TO ME AND SAY I
7 FILED OBJECTIONS OR RESPONSES TO THE DISCOVERY REQUESTS
8 THAT WERE SERVED IN THAT CASE.

9 A. I WOULD HAVE TO LOOK, TO BE HONEST. I KNOW THAT
10 I DISCUSSED THE DISCOVERY WITH MY CLIENTS, BUT MY MEMORY
11 IS STARTING TO GET A TAD MIXED WITH THE OTHER DISCOVERY
12 REQUESTS. I DON'T WANT TO MISSTATE ANYTHING. BUT I
13 BELIEVE THERE IS ACTUALLY DISCOVERY REQUESTS THAT THERE
14 WERE SOME RESPONSES. AGAIN, I DON'T WANT TO
15 SPECIFICALLY MISSTATE ANYTHING.

16 THE COURT: THAT IS ALL I HAVE.

17 SO HERE IS WHAT I WANT TO DO. I'M GOING
18 TO TAKE ABOUT TEN MINUTES, SO I WANT EVERYBODY BACK AT
19 3:55. I'M GOING TO DO -- I WILL MAKE A COUPLE FACTUAL
20 FINDINGS. I WANT TO MULL OVER MY NOTES A LITTLE BIT,
21 AND THEN WE CAN TALK IF IT IS APPROPRIATE AT THAT POINT
22 ABOUT WHAT, IF ANY, REMEDIES ARE STILL AT PLAY GIVEN
23 WHAT I HAVE SAID ABOUT THE MALPRACTICE ISSUE. SO LET'S
24 GO OFF THE RECORD AND WE WILL TAKE TEN MINUTES.

25 (BREAK TAKEN.)

1 THE COURT: SO LET'S GO BACK ON THE
2 RECORD. OKAY. I HAVE LISTENED CAREFULLY TO THE
3 TESTIMONY TODAY, AND I'M OBVIOUSLY FAMILIAR WITH BOTH OF
4 THESE CASES. I'VE SPENT A FAIR AMOUNT OF TIME INVESTED
5 IN THEM AND MANAGING THEM. SO LET ME MAKE SOME FINDINGS
6 FIRST, SOME FACTUAL FINDINGS.

7 LET ME START WITH THIS. IT'S MY
8 CONCLUSION THAT MR. THOMAS IS NOT CREDIBLE ON MUCH OF
9 HIS TESTIMONY. IN PARTICULAR, I FIND THAT HE LIED TO ME
10 UNDER OATH WITH RESPECT TO THE ISSUE OF WHY HE SOUGHT
11 THE EXTENSION FOR THE SUMMARY JUDGMENT MOTION. HE SAID,
12 IN WHAT I HEARD TO BE NO UNCERTAIN TERMS, THAT HE SOUGHT
13 THE EXTENSION IN ORDER TO PRESENT THE RECORDINGS TO ME.
14 HE DIDN'T KNOW ABOUT THE RECORDINGS AT THE TIME IN
15 OCTOBER. HE DIDN'T KNOW ABOUT THEM FOR SEVERAL MONTHS
16 THEREAFTER. AND IN ADDITION TO THE FACT THAT I DON'T
17 BELIEVE HIS BACKTRACKING WHEN HE IS CONFRONTED WITH THAT
18 ON THE RECORD, I'D ALSO NOTE THAT WHEN HE SUBMITTED TO
19 ME THE WRITTEN REQUESTS FOR EXTENSIONS, THEY MADE NO
20 MENTION OF NEWLY ACQUIRED OR NEW INCOMING EVIDENCE. AND
21 THE HISTORY ON TOP OF THAT IS THAT THE MOTION FOR AN
22 EXTENSION WAS FILED IN LATE OCTOBER. THERE WERE ABOUT
23 SIX OR SEVEN WEEKS THAT PASSED BETWEEN THE DENIAL OF
24 THAT REQUEST AND OUR RULING ON SUMMARY JUDGMENT, IN PART
25 BECAUSE THE LOCAL RULES DO NOT PERMIT A GRANT OF SUMMARY

1 JUDGMENT AS UNOPPOSED. YOU CAN TREAT THE FACTS AS
2 ADMITTED, BUT WE WENT THROUGH AND DID THE ANALYSIS TO
3 FIGURE OUT WHETHER THOSE ADMITTED FACTS JUSTIFIED A
4 GRANT OF SUMMARY JUDGMENT. I TAKE THE SILENCE IN THE
5 EXTENSION REQUESTS AND THE SILENCE DURING THAT SIX OR
6 SEVEN WEEK TIME PERIOD AS CONFIRMATION OF THE FACT THAT
7 THE RECORDINGS WERE NOT SOMETHING THAT MR. THOMAS HAD OR
8 WAS LOOKING TO GET. I SEE NO EVIDENCE IN THE RECORD IN
9 ADDITION OF ANY EFFORT TO GATHER THAT INFORMATION IN
10 THAT TIME FRAME.

11 I'M TROUBLED BY THE FACT THAT I THINK
12 THAT -- I'M TROUBLED ABOUT THE FACT THAT I'M FINDING
13 THAT MR. THOMAS LIED UNDER OATH. IT'S NOT THE FIRST
14 TIME IT HAS HAPPENED. I FOUND THAT HE HAD LIED TO ME
15 WHILE UNDER OATH BACK IN MARCH DURING THE SANCTIONS
16 HEARING AS WELL, WITH REGARD TO HIS EFFORTS TO OBTAIN
17 THE INFORMATION NECESSARY TO FILE APPROPRIATE DISCLOSURE
18 STATEMENT IN THE JACOVETTI LAW CASE. SO THAT OBVIOUSLY
19 HAS AN IMPACT ON HOW I VIEW THE EVIDENCE THAT I HAVE
20 HEARD TODAY.

21 BEYOND THAT, I HAVE SEVERAL FINDINGS TO
22 MAKE. I FIND THAT MR. THOMAS DID NOT COMMUNICATE THE
23 SUMMARY JUDGMENT AWARD TO HIS CLIENTS, THAT BEING
24 MR. YASHAYEV AND MR. SHARGEL, AND I GUESS BY EXTENSION
25 FCS CAPITAL, OF WHICH THEY ARE THE TWO PRINCIPALS, IN A

1 TIMELY WAY. THE ORDER WAS ENTERED IN DECEMBER. IT'S
2 NOT ENTIRELY CLEAR TO ME FROM THE RECORD THE POINT AT
3 WHICH MR. THOMAS TOLD HIS CLIENTS ABOUT IT. I DO CREDIT
4 MR. SHARGEL'S TESTIMONY THAT HE LEARNED THERE WAS A
5 JUDGMENT AGAINST HIM IN AUGUST WHEN HE WAS DOING A
6 CREDIT SEARCH TO BUY A NEW CAR. WHETHER THERE WAS SOME
7 MORE OBLIQUE REFERENCE TO SOMETHING THAT WAS ULTIMATELY
8 -- THAT REALLY WAS A JUDGMENT SOMETIME EARLIER IN THE
9 SUMMER, CERTAINLY THERE IS CONFIRMATION THAT THERE WERE
10 REQUESTS FOR DISCOVERY IN AID OF EXECUTION A COUPLE OF
11 WEEKS EARLIER IN LATE JULY. THERE MAY HAVE BEEN AN
12 EARLIER POINT AT WHICH THERE WAS SOME REFERENCE TO
13 DISCOVERY IN AID OF EXECUTION AS WELL. IT'S POSSIBLE.
14 EITHER WAY, IT WAS A BELATED DISCLOSURE TO THE CLIENTS.
15 IT WAS MONTHS AND MONTHS AFTER THAT JUDGMENT HAD BEEN
16 ENTERED AGAINST THEM, AFTER THE OBLIGATION THAT THE
17 JUDGMENT ENTAILED KICKED IN AGAINST THEM.

18 AND I THINK PART OF WHAT IS IMPORTANT
19 HERE TOO IS THAT AN OBLIGATION, AN ATTORNEY'S OBLIGATION
20 IS NOT SIMPLY TO USE LEGAL TERMINOLOGY AND TO SAY
21 SOMETHING LIKE SUMMARY JUDGMENT WAS GRANTED, BUT TO
22 EXPLAIN TO THE CLIENTS WHAT THE IMPORT OF THE COURT'S
23 ACTION IS AND TO ADVISE THEM ON HOW TO ADDRESS THAT,
24 WHETHER IT IS TO MITIGATE THE SIGNIFICANCE OF IT OR
25 SIMPLY TO OWN UP TO IT. THERE ARE OBVIOUSLY VARIOUS

1 STRATEGIC CHOICES THAT CAN BE MADE, BUT I THINK THAT IS
2 PART OF AN ATTORNEY'S OBLIGATION, AND I THINK THAT
3 MR. THOMAS FELL WELL SHORT OF THAT HERE IN DEALING WITH
4 THE DISCLOSURES TO CLIENTS ABOUT THE SUMMARY JUDGMENT
5 AWARD.

6 I ALSO FIND THAT MR. THOMAS DID NOT TELL
7 MR. SHARGEL AND MR. YASHAYEV THAT THEY WERE PLAINTIFFS
8 IN THE JACOVETTI CASE. I DO FIND THAT THERE WAS ENOUGH
9 INFORMATION IN FRONT OF MR. JACOVETTI THAT MR. THOMAS
10 MIGHT HAVE THOUGHT THAT MR. JACOVETTI WAS ACCEPTING THE
11 IDEA THAT MR. SHELTON AND MR. YASHAYEV WERE GOING TO BE
12 PLAINTIFFS. I DO THINK -- I CREDIT WHAT MR. JACOVETTI
13 HAS TESTIFIED TO, THAT HE TOLD MR. THOMAS ORALLY NOT TO
14 INCLUDE THEM. THERE DO SEEM TO HAVE BEEN WRITINGS IN
15 WHICH THEY WERE INCLUDED AND WHICH HE SAID OKAY. THE
16 TIME LINE IS NOT ENTIRELY CLEAR TO ME. I DON'T KNOW
17 THAT IT MATTERS THAT MUCH BECAUSE I HAVE NOT SEEN
18 ANYTHING IN THE RECORD THAT WOULD HAVE ABSOLVED
19 MR. THOMAS OF THE OBLIGATION TO GET SOME SORT OF
20 AUTHORIZATION FROM MR. SHARGEL AND MR. YASHAYEV TO BE
21 PLAINTIFFS IN THAT ACTION AND NOT JUST TO TALK TO
22 MR. JACOVETTI ABOUT IT. I RECOGNIZE THEY MAY HAVE A
23 CLOSE RELATIONSHIP, THEY MAY BE FRIENDS, THEY MAY BE
24 BUSINESS ASSOCIATES OF SOME KIND, BUT MR. THOMAS ALSO
25 WAS IN A POSITION TO KNOW THAT THEY WERE NOT ALL THE

1 SAME AND THE SAME ENTITY, AND IN FACT MUCH EARLIER IN
2 THE ORIGINAL SHELTON VERSUS FCS CASE MR. THOMAS OBTAINED
3 A DISMISSAL OF MR. JACOVETTI AND JACOVETTI LAW, BUT NOT
4 OF FCS, SHARGEL AND YASHAYEV, WHICH REINFORCES THE IDEA
5 THAT THEY ARE SEPARATE. AND SO I THINK MR. THOMAS FELL
6 SHORT THERE AS WELL IN HIS OBLIGATION TO GET
7 CONFIRMATION FROM HIS CLIENTS THAT THEY INTENDED TO
8 PARTICIPATE IN A LAWSUIT THAT HE WAS FILING ON THEIR
9 BEHALF.

10 I FIND THAT MR. THOMAS'S COMPLIANCE WITH
11 MY SANCTIONS ORDER IN THE JACOVETTI LAW CASE WAS DODGY
12 AT BEST. YOU KNOW, THERE WERE VARIOUS PROBLEMS WITH IT.
13 WE LOOKED AT THE E-MAIL THAT MR. THOMAS POINTED ME TO,
14 WHICH I BELIEVE IS -- IT WAS DOCUMENT 43, AND THEN IT
15 WAS EXHIBIT, I GUESS, C TO DOCUMENT 43, WHICH IS PAGE 11
16 OF THE ECF DOCUMENT. THAT E-MAIL IS NOT A CLEAR
17 DISCLOSURE TO ME OF THE INFORMATION TO THE CLIENTS.
18 FIRST OF ALL, IT SAYS SHELTON MATTER INFORMATION. FROM
19 MR. SHARGEL AND YASHAYEV'S POINT OF VIEW THAT CERTAINLY
20 WOULD HAVE IMPLIED THE SHELTON VERSUS FCS MATTER AND NOT
21 THE JACOVETTI LAW MATTER. AND ALL IT SAYS IS: PLEASE
22 SEE THE ATTACHED DOCUMENTS REGARDING YOUR CASE. THAT IS
23 NOT A TERRIBLY FULSOME DISCLOSURE. IT SORT OF PUTS THE
24 BALL IN THE CLIENTS' COURT TO READ THE INFORMATION THAT
25 IS THERE, AND PARTICULARLY IN THE CASE OF MR. SHARGEL

1 AND MR. YASHAYEV, THEY ARE NOT LAWYERS. THEY ARE, I
2 THINK, NOT LIKELY TO PAY ATTENTION TO, FOR EXAMPLE, THE
3 CAPTION ON SOMETHING THAT THEY GET THAT'S A LEGAL
4 DOCUMENT. THEY ARE FRANKLY UNLIKELY TO SIT DOWN ON
5 THEIR OWN AND JUST READ A TRANSCRIPT JUST BECAUSE
6 MR. THOMAS HAS SAID HERE IS SOME INFORMATION FROM YOUR
7 CASE, WITHOUT ANY CONTEXT FOR THE FACT THAT IT IS
8 ARISING OUT OF A SANCTIONS ORDER OR ANYTHING ELSE. AND
9 EVEN THE FILE NAMES THEMSELVES, THEY TALK ABOUT AN
10 ORDER, THEY TALK ABOUT A MEMO, THEY TALK ABOUT A NEW
11 ORDER, IT TALKS ABOUT A FINAL PDF FULL, WHICH TO A
12 LAWYER MIGHT TELL YOU IT'S THE FULL SIZE TRANSCRIPT. IT
13 DOES NOT TELL YOU THAT, I THINK, IF YOU ARE NOT A
14 LAWYER. ON ITS OWN, THAT MIGHT GIVE ME A LITTLE BIT OF
15 PAUSE, BUT I MIGHT OVERLOOK IT AS THE KIND OF THING THAT
16 JUST GOT OVERLOOKED IN THE HUSTLE AND BUSTLE OF DAILY
17 LIFE, THAT MR. THOMAS WAS TRYING TO GET IT OUT THE DOOR.

18 THE PROBLEM IS, IT'S NOT THE ONLY PROBLEM
19 THAT I HAD WITH THE COMPLIANCE WITH MY SANCTIONS ORDER.
20 THE COMPLIANCE WAS BESET WITH PROBLEMS. THERE WAS A
21 REPRESENTATION THAT PAYMENT WAS MADE. THE CLERK'S
22 OFFICE HAS TOLD ME THEY NEVER RECEIVED THE INITIAL
23 PAYMENT. MR. THOMAS SENT THE INFORMATION TO BAR
24 ASSOCIATIONS INSTEAD OF DISCIPLINARY BOARDS. WHEN HE
25 SENT THE INFORMATION TO JUDGE HILLMAN IN THE CASE IN NEW

1 JERSEY, HE DID SO IN A WAY THAT FROM MY PERSPECTIVE
2 OBSCURED THE SIGNIFICANCE OF THE INFORMATION. I
3 UNDERSTAND SAVING TREES BY PUTTING IT ON A DISK OR A
4 MEMORY STICK OR SOMETHING LIKE THAT IN OUR DIGITAL AGE.
5 BUT TYPICALLY THOSE THINGS COME TO ME AS A JUDGE WITH
6 SOME COVER LETTER OR SOME CONTEXT. I HAVE A LOT OF
7 CASES IN FRONT OF ME. JUST GETTING A DISK WITH
8 INFORMATION, AGAIN, PUTTING THE BALL IN THE COURT OF
9 JUDGE HILLMAN TO TRY TO FIGURE OUT AND PARSE THROUGH
10 WHAT IT WAS HE HAD GOTTEN AND WHY, I THINK WAS AN EFFORT
11 TO MAYBE COMPLY WITH THE VERY STRICT LETTER OF MY ORDER,
12 BUT CERTAINLY TO EVADE THE SPIRIT OF IT.

13 AND AGAIN, EACH ONE OF THESE ISSUES
14 STANDING ON ITS OWN IS THE SORT OF THING THAT I MIGHT
15 LOOK AT AND SAY, ACCIDENTS HAPPEN, IT'S NOT THAT BIG A
16 DEAL, BUT WHEN I LOOK AT THEM ALL TOGETHER, THEY PRESENT
17 A PATTERN, AND THAT PATTERN IS ONE OF AN EFFORT TO
18 MINIMIZE, EVADE, AVOID, WHATEVER VERB YOU WANT TO USE,
19 THE IMPORT OF MY SANCTIONS, EVEN WHILE PAYING SOME LIP
20 SERVICE TO THEM AND SUGGESTING COMPLIANCE.

21 THEN THE FOURTH ISSUE, I FIND THAT
22 MR. THOMAS DELAYED TELLING MR. SHARGEL AND MR. YASHAYEV
23 ABOUT THE DISCOVERY THAT HAD BEEN SERVED ON HIM IN AID
24 OF EXECUTION. THAT DISCOVERY WAS SERVED IN, I BELIEVE,
25 EARLY APRIL OF 2020. IN LATE MAY WHEN I GOT A MOTION

1 REPRESENTING THAT THERE HAD BEEN NO RESPONSE AT ALL, I
2 ISSUED AN ORDER SUMMARILY GRANTING THE MOTION TO COMPEL,
3 PURSUANT TO OUR LOCAL RULES. BUT IT DOES NOT LOOK LIKE
4 EVEN AT THAT POINT MR. THOMAS TOLD THE CLIENTS ABOUT IT.
5 IN FACT, IT DOES NOT LOOK TO ME LIKE HE TOLD THE CLIENTS
6 ABOUT THE DISCOVERY OBLIGATIONS UNTIL JULY. SO IT TOOK
7 ANOTHER SEVEN WEEKS OR SO TO TELL THEM ABOUT THAT. AND
8 IN THE INTERVENING TIME HE SPENT SOME TIME RESISTING IT.
9 THAT IS ALL CONSISTENT IN MY MIND WITH THE FACT THAT HE
10 HAD NOT TOLD THEM IN THE FIRST INSTANCE ABOUT THE
11 SUMMARY JUDGMENT AWARD. SO THEREFORE HE HAD EVERY
12 INCENTIVE TO AVOID TELLING THEM THAT THERE WERE
13 DISCOVERY OBLIGATIONS IN FURTHERANCE OF THAT AWARD.

14 IN PARTICULAR, I JUST WANT TO NOTE THAT
15 I'M TROUBLED BY SOME OF THE CORRESPONDENCE I LOOKED AT
16 TODAY THAT DEALS WITH THE DISCOVERY OBLIGATIONS AND THE
17 COMPLIANCE WITH MY ORDER, BECAUSE AGAIN THEY SHED SOME
18 LIGHT INTO MR. THOMAS'S APPROACH HERE. AND SO IN
19 PARTICULAR WHEN I LOOK AT EXHIBIT 9, WHICH WAS PAGES 39
20 TO 42 OF MR. THOMAS'S SUBMISSION, AND IN PARTICULAR I
21 LOOK AT PAGE 41 OF THE PDF, WHICH I GUESS WOULD BE THE
22 THIRD PAGE OUT OF FOUR IN THE EXHIBIT, THE FIRST E-MAIL
23 IN THE E-MAIL STRING IS AN E-MAIL FROM MR. THOMAS DATED
24 JUNE 19, 2020 AT 9:55 A.M. AND IN THE SECOND PARAGRAPH,
25 HE SAYS: I WILL SUBMIT BLANKET OBJECTIONS TO HIS MOST

1 RECENT ATTEMPTS AS POST-JUDGMENT DISCOVERY, TO KEEP
2 FIGHTING HIM ON THAT AS WELL TO SLOW IT DOWN. I'M
3 TROUBLED BY THAT BECAUSE THIS IS JUNE 19TH, AND ON MAY
4 26TH I ISSUED AN ORDER COMPELLING THE RESPONSE WITHOUT
5 OBJECTION. AND SO THE IDEA THAT THREE WEEKS LATER.
6 MR. THOMAS WAS PREPARED TO ASSERT BLANKET OBJECTIONS TO
7 SLOW THE PROCESS DOWN SEEMS WHOLLY AT ODDS WITH THE
8 ORDER THAT I ISSUED.

9 AND THAT KIND OF LEADS IN TO MY LAST
10 FACTUAL FINDING, WHICH IS THAT MR. THOMAS HAS FLOUTED MY
11 DISCOVERY ORDERS THROUGH THE PROCESS OF DOING DISCOVERY
12 IN AID OF EXECUTION. AGAIN, IT WAS NOT REALLY UNTIL
13 JULY THAT MR. THOMAS FINALLY GOT TO THE CLIENTS AND SAID
14 I NEED TO GET SOME INFORMATION FROM YOU. AND BY THAT
15 POINT I HAD REPEATEDLY COMPELLED RESPONSES. AND IT'S
16 NOT CLEAR TO ME WHY IT TOOK SO LONG FOR THOSE RESPONSES
17 OR MY ORDERS AND THE CONCEPT OF GETTING RESPONSES TO
18 WEND THEIR WAY TO MR. SHARGEL AND MR. YASHAYEV.

19 SO THESE ARE THE FACTUAL FINDINGS THAT I
20 REACHED BASED ON THE HEARING TODAY, AND PARTICULARLY AS
21 I FOCUSED ON THE ISSUES THAT I OUTLINED AT THE BEGINNING
22 OF THE DAY. I GUESS WHAT I WANT TO DO IS I WANT TO
23 PAUSE THERE. THIS ARISES IN THE CONTEXT OF THE JOINT
24 MOTION FOR AN ORDER TO SHOW CAUSE. I THINK EFFECTIVELY
25 WHERE WE ARE AT THIS POINT IS IN ORDER TO SHOW CAUSE

1 WOULD BE AN ORDER FOR ME TO THEN GIVE MR. THOMAS AN
2 OPPORTUNITY TO DEFEND HIMSELF AND CONDUCT SOME SORT OF
3 FACT FINDING PROCEEDING. I THINK WE'VE PASSED THAT.
4 I'M KIND OF TREATING THE ORDER TO SHOW CAUSE AS
5 EFFECTIVELY A MOTION FOR -- THE MOTION FOR ORDER TO SHOW
6 CAUSE IS EFFECTIVELY A MOTION FOR SANCTIONS OR FOR
7 CONTEMPT.

8 I'M MINDFUL OF THE LIMITS OF THOSE
9 REMEDIES, GIVEN WHERE I FIND MYSELF IN THESE TWO CASES.
10 THE JACOVETTI LAW CASE IS OVER. I GRANTED A MOTION TO
11 DISMISS IN THAT CASE. THERE HAS BEEN NO APPEAL. THE
12 TIME TO APPEAL HAS LONG SINCE PASSED. THE SHELTON
13 VERSUS FCS CASE, OBVIOUSLY WE TALKED ABOUT AD NAUSEAM.
14 I GRANTED SUMMARY JUDGMENT LAST YEAR. IT'S NOW BEEN
15 ALMOST 11 MONTHS SINCE THAT HAPPENED. THERE HAVE BEEN
16 SUBSTANTIAL ISSUES TO COMPEL COMPLIANCE WITH THE
17 DISCOVERY IN AID OF EXECUTION, BUT I DO THINK WE ARE
18 PAST THAT POINT. MY UNDERSTANDING FROM THE
19 CONVERSATIONS WE HAVE HAD WITH MR. REO AND MR.
20 ARTOM-GINZBURG IS THAT THEY ARE WORKING TOGETHER TO
21 RESOLVE THOSE ISSUES. AND I'M NOT AWARE AT THE MOMENT
22 THAT THERE ARE LIVE DISPUTES AS TO THAT EITHER. EVEN IF
23 THERE WERE, IT'S NOT CLEAR TO ME THAT MR. THOMAS IS
24 INVOLVED, GIVEN THE TESTIMONY TODAY THAT MR. SHARGEL'S
25 VIEW IS THAT MR. THOMAS HAS BEEN FIRED. MR. THOMAS HAS

1 MOVED TO WITHDRAW. IT'S CLEAR TO ME AT THIS POINT, THE
2 REPRESENTATIVE FOR MR. SHARGEL, MR. YASHAYEV AND FCS IS
3 MR. ARTOM-GINZBURG. IT IS NOT MR. THOMAS.

4 SO I HAVE EXPRESSED MY VIEWS I THINK AS
5 TO THE ISSUE OF MALPRACTICE INSURANCE, WHICH I KNOW IS
6 PART OF WHAT DROVE THIS, WAS A DESIRE TO GET THAT
7 INFORMATION. I JUST DON'T THINK THAT IS WHAT IS REALLY
8 IN FRONT OF ME. I UNDERSTAND IT MAY FACILITATE A
9 SETTLEMENT OF THIS CASE, THE SHELTON CASE AT THIS POINT.
10 IT MAY EVEN RESOLVE OR BE A STEP TOWARDS RESOLVING THE
11 POTENTIAL MALPRACTICE CLAIM. BUT I DON'T THINK THAT IS
12 WHAT THE SANCTIONS REMEDY IS FOR.

13 SO WHAT I WANT TO DO IS, I WILL HEAR FROM
14 EACH OF YOU, I WILL START WITH YOU, MR. ARTOM-GINZBURG,
15 AS TO YOUR THOUGHTS AS TO AN APPROPRIATE REMEDY, IF ANY,
16 GIVEN WHAT I HAVE SAID.

17 MR. ARTOM-GINZBURG: YOUR HONOR, ONE OF
18 MY -- I WOULD FILE A COMPLAINT IN FEDERAL COURT
19 TOMORROW. ONE OF MY CONCERNS IS THAT IT WOULD BE
20 ASSIGNED TO A JUDGE WHO IS UNAWARE OF THE HISTORY OF
21 THIS MATTER AND IS UNAWARE OF MR. THOMAS'S HISTORY OF
22 EVADING DISCOVERY REQUESTS. AS YOU SAY, HE WOULD BE
23 REQUIRED TO DISCLOSE INSURANCE UNDER RULE 26, BUT WE
24 HAVE ALSO SEEN HIS ATTEMPTS TO NAVIGATE AROUND THE RULES
25 AS THEY -- AS THEY APPLY TO HIM, WHICH IS WHY MR. REO

1 AND I THOUGHT THAT IT MIGHT BE AN ADVANTAGE TO BRING IT
2 TO YOUR HONOR. IF I WERE TO FILE A COMPLAINT AND IT WAS
3 ASSIGNED TO YOUR HONOR, THEN YOUR HONOR WOULD OF COURSE
4 HAVE THE WHOLE WEIGHT OF JUDICIAL SANCTIONS AVAILABLE
5 SHOULD HE NOT COMPLY. BUT AGAIN, THAT IS ALSO KICKING
6 THE CAN DOWN THE ROAD ANOTHER THREE, FOUR WEEKS UNTIL A
7 RULE 26 CONFERENCE WOULD EVEN BE SCHEDULED.

8 THE COURT: I HEAR THAT, AND I CERTAINLY
9 SYMPATHIZE AND UNDERSTAND THE CONCERN,
10 MR. ARTOM-GINZBURG. YOU KNOW, I'M NOT TRYING TO BE
11 OVERLY FORMALISTIC ABOUT THIS, BUT I ALSO WANT TO BE
12 MINDFUL OF WHAT MY ROLE IS HERE. AND I THINK THAT IS
13 IMPORTANT HERE. I DON'T WANT TO WADE MY WAY INTO WHAT
14 AMOUNTS TO A DIFFERENT CASE THAT IS NOT IN FRONT OF ME.
15 THAT IS WHAT GIVES ME SOME PAUSE.

16 SO IF YOU ARE GOING TO FILE A COMPLAINT.
17 I THINK YOU SHOULD. I THINK IT WILL KICK THAT PROCESS
18 OFF. YOU CAN LOOK AT THE LOCAL RULES AS TO RELATEDNESS.
19 I HONESTLY DON'T HAVE THE VERBIAGE IN FRONT OF ME AS TO
20 WHETHER YOU CAN MAKE A GOOD FAITH CLAIM THAT IT IS
21 RELATED TO THESE CASES, IN WHICH CASE IT WILL COME TO ME
22 AT LEAST IN THE FIRST INSTANCE. AND THEN I WILL HAVE TO
23 PULL THE RULE AND SEE IF IT MEETS THAT TEST OR NOT.
24 CERTAINLY, THAT IS WHY I HAVE BOTH OF THESE CASES IS
25 BECAUSE THE SECOND ONE WHEN MR. THOMAS FILED WAS MARKED

1 AS RELATED TO THE INITIAL CASE, I THINK RIGHTLY SO,
2 ALTHOUGH MAYBE THERE IS AN ARGUMENT THAT THEY ARE
3 DIFFERENT TRANSACTIONS. I DON'T KNOW.

4 AND SO I THINK THAT THAT IS THE BEST
5 REMEDY I CAN OFFER YOU AT THIS POINT. I HEAR WHAT YOU
6 ARE SAYING. I WORRY ABOUT THE IDEA OF WAITING UNTIL A
7 CASE THAT IS JUST NOT IN FRONT OF ME.

8 MR. ARTOM-GINZBURG: I UNDERSTAND, YOUR
9 HONOR. I ALSO KNOW YOUR HONOR IS AWARE THAT MY CLIENTS
10 ARE ESSENTIALLY OUT OF BUSINESS. THEIR BANK ACCOUNTS
11 ARE SHUT DOWN. THEY HAVE NO ACCESS TO ANYTHING. IN THE
12 LAST WEEK MR. SHELTON ISSUED THE JUDGMENT IN ARIZONA,
13 AND HAS EXECUTED ON THEIR CREDIT CARD PROCESSOR. THEY
14 LITERALLY CANNOT OPERATE AT THIS POINT. AND IT ALSO
15 BECOMES AN ISSUE OF -- THE OLD RULE ONE IN PHILADELPHIA
16 PRACTICE, YOU GOT TO BE ABLE TO -- YOU GOT TO BE ABLE TO
17 PAY YOUR STUFF IN ORDER TO GET THINGS FILED. AND I
18 DON'T WANT TO LEAVE THESE GUYS IN THE LURCH. I DON'T
19 WANT -- I ALSO DON'T WANT TO RUN UP A HUGE BILL AND THEN
20 FIND OUT AFTERWARDS THAT MR. THOMAS HAS BEEN LYING ABOUT
21 INSURANCE THE WHOLE TIME.

22 THE COURT: WELL, I HEAR YOU. I DO. AND
23 THERE MAY BE -- MAYBE THERE ARE OTHER MECHANISMS THAT I
24 HAVE NOT THOUGHT OF TO GET THE INFORMATION AS WELL.
25 AGAIN, THE IDEAS THAT OCCUR TO ME. ONE OF THE LESSONS I

1 HAVE LEARNED NOW IN 19 MONTHS HERE IS THAT I'M NOT
2 PRACTICING ANYMORE. I'M NOT GOING TO ENGAGE IN SORT OF
3 THE STRATEGIZING THAT I MIGHT HAVE WHEN I WAS A LAWYER.
4 AND SO I THINK THAT YOU KNOW YOU SHOULD TALK TO MR. REO.
5 THERE MAY BE WAYS THAT YOU CAN ALL WORK TOGETHER TO
6 FACILITATE SOME OF THOSE ISSUES. MR. REO I THINK -- I
7 DON'T KNOW WHAT YOUR CLIENTS HAVE IN THE WAY OF ASSETS,
8 MR. ARTOM-GINZBURG, BUT IT MAY BE FROM MR. REO'S
9 PERSPECTIVE HE IS APPROPRIATELY INCENTED TO STEP BACK
10 FROM THE EXECUTION ON AT LEAST SOME OF THE ASSETS IN
11 ORDER TO FACILITATE YOUR ABILITY TO LITIGATE THE BIGGER
12 POT. YOU KNOW, THAT IS A CONVERSATION THE TWO OF YOU
13 CAN HAVE. SO I HEAR WHAT YOU ARE SAYING. BUT I'M JUST
14 NOT GOING TO GET THERE, I DON'T THINK, ON THE
15 MALPRACTICE ISSUE.

16 MR. ARTOM-GINZBURG: I SHOULD ALSO
17 FINALLY POINT OUT THAT THERE IS IN FACT A CASE IN
18 PHILADELPHIA COUNTY COURT OF COMMON PLEAS WHERE
19 MR. THOMAS IS BEING SUED FOR MALPRACTICE ON THE
20 BANKRUPTCY CLAIM, AND THEY HAVE GONE THROUGH DISCOVERY
21 ORDER AFTER DISCOVERY ORDER AFTER DISCOVERY ORDER, AND
22 AS OF YESTERDAY ANYWAY HE HAD NOT DISCLOSED THE
23 INSURANCE INFORMATION.

24 THE COURT: WELL, AGAIN, I DON'T KNOW
25 WHERE YOU WILL WIND UP IF YOU COME HERE. I DON'T MEAN

1 THIS AS A ASPERSION ON MY COLLEAGUES DOWN THE ROAD.
2 THEY HAVE MUCH BUSIER DOCKETS THAN WE DO. IT'S
3 SOMETIMES HARDER FOR THEM TO MANAGE THINGS THAN IT IS
4 FOR US, AND THE TOOLS MAY NOT JUST BE AS EASILY
5 AVAILABLE. I THINK WHEN WE WERE HERE BEFORE, YOU HAD
6 SAID YOU WOULD FILE IN THIS COURT. YOU MENTIONED THAT
7 AGAIN EARLIER. I THINK YOU WILL HAVE MORE LUCK HERE
8 THAN YOU WILL DOWN THE ROAD IN COMPELLING WHATEVER
9 DISCOVERY YOU NEED. ALTHOUGH AGAIN -- AND AGAIN, WE ARE
10 TALKING ABOUT SOMETHING THAT IS -- IT'S NOT A DISCOVERY
11 REQUEST, IT'S A SELF-EXECUTING DISCLOSURE THAT MOST
12 PEOPLE TAKE PRETTY SERIOUSLY. IT'S PRETTY BASIC AND
13 PRETTY SERIOUS.

14 I WILL HEAR ANYTHING ELSE YOU HAVE TO
15 SAY, MR. ARTOM-GINZBURG, ON THE REMEDY, IF THERE ARE
16 OTHER THOUGHTS YOU HAVE.

17 MR. ARTOM-GINZBURG: I JUST WANT TO SAY
18 FOR THE RECORD, YOUR HONOR, THAT I DON'T HAVE ANY ILL
19 WILL TOWARDS MR. THOMAS. MR. THOMAS SEEMS TO HAVE SOME
20 SORT OF FEELINGS ABOUT ME. YOUR HONOR, I HAVE BEEN A
21 LITIGATOR IN THE CITY FOR 18 YEARS. I HAVE BEEN A SOLO
22 PRACTITIONER FOR TEN. YOU KNOW, MY REPUTATION AND MY
23 INTEGRITY IS BASICALLY ALL I GOT TO GO ON.

24 AND MR. REO, I THINK, AT A TASK, I'M NOT
25 AN OGRE. I'M TRYING TO GET THESE THINGS RESOLVED AND I

1 DON'T TAKE ANY OF THIS STUFF PERSONALLY. TO THE EXTENT
2 THAT I RAISED MY VOICE EARLIER, I WOULD LIKE TO
3 APOLOGIZE TO THE COURT.

4 THE COURT: I UNDERSTAND. I APPRECIATE
5 IT.

6 MR. REO, ANYTHING YOU HAVE TO SAY ON
7 REMEDY?

8 MR. REO: ONE POSSIBLE REMEDY IS WE TWICE
9 MOVED FOR SANCTIONS AGAINST MR. THOMAS IN THE FORM OF
10 ATTORNEYS' FEES IN JACOVETTI LAW V SHELTON. IN LIGHT OF
11 EVERYTHING WE'VE HEARD TODAY, IF THAT ACTION WAS NOT
12 AUTHORIZED BY THE PLAINTIFFS IN THAT CASE, I THINK WE
13 WOULD WANT TO REVISIT THE ISSUE OF ATTORNEYS' FEES AS TO
14 MR. THOMAS.

15 THE COURT: SO I HEAR YOU, MR. REO. I
16 DON'T THINK THAT GETS YOU REAL FAR BECAUSE THE INCLUSION
17 OF MR. SHARGEL AND MR. YASHAYEV DID NOT REALLY IMPACT
18 YOUR COSTS IN DEFENDING THAT CASE. THE CASE WAS COMING
19 FROM MR. JACOVETTI ANYWAY. I THINK THAT THE AMENDED
20 COMPLAINT THAT WAS FILED WOULD LIKELY HAVE BEEN FILED
21 ANYWAY, GIVEN THE DESIRE TO ADD INFORMATION ABOUT THE
22 RECORDINGS. SO I DON'T THINK THAT WHAT I HEARD TODAY --
23 AGAIN, IT'S PROBLEMATIC, BUT I DON'T SEE THAT IT
24 ACTUALLY HAD AN IMPACT ON THE COSTS YOU INCURRED TO
25 DEFEND THE ACTION.

1 MR. REO: TO THE EXTENT THAT IT APPEARS
2 IT WAS BROUGHT TO CAUSE DELAY AND TO BOG US DOWN, AND
3 MR. THOMAS HAS REPEATEDLY TALKED ABOUT WANTING TO SLOW
4 THINGS DOWN IN SHELTON V FCS WITH POST-JUDGMENT
5 DISCOVERY, MY THEORY HAS ALWAYS BEEN, I HAVE ALWAYS
6 MAINTAINED THAT JACOVETTI LAW V SHELTON WAS FILED
7 PRIMARILY SO MR. THOMAS COULD CONCEAL HIS MALPRACTICE
8 AND NOT HAVE TO DIVULGE TO HIS CLIENTS, WHO ARE THE
9 DEFENDANTS IN THAT CASE, THAT THEY WERE ON THE RECEIVING
10 END OF A \$54,000 JUDGMENT.

11 THE COURT: I DON'T THINK THE EVIDENCE
12 SUPPORTS THAT, MR. REO. I'M LOOKING AT THE RECORD THAT
13 IS IN FRONT OF ME. THERE IS TESTIMONY THAT
14 MR. JACOVETTI WAS CONSIDERING AN AFFIRMATIVE ACTION AS
15 EARLY AS APRIL OF 2019. SO THAT CERTAINLY PREDATES ANY
16 OF THESE ISSUES IN TERMS OF MALPRACTICE. YOU KNOW,
17 MR. JACOVETTI TESTIFIED ABOUT THE REASONS THAT HE WANTED
18 TO PURSUE THE CLAIM, THE REASONS THAT HE SAW POTENTIAL
19 HARM TO HIS REPUTATION. YOU KNOW, WHETHER IT WAS GOING
20 TO BE A RICO CLAIM OR A DEFAMATION CLAIM OR SOME OTHER
21 FORM OF AFFIRMATIVE LITIGATION, I DON'T SEE EVIDENCE TO
22 SUGGEST THAT IT IS TIED AT LEAST SOLELY TO THE SUMMARY
23 JUDGMENT AWARD THAT WAS MADE. I MEAN, IS IT POSSIBLE
24 THAT YOU WOULD HAVE FOUND YOURSELF DEFENDING IN THE FORM
25 OF A COUNTERCLAIM INSTEAD OF THE FORM OF AN AFFIRMATIVE

1 PIECE OF LITIGATION? MAYBE. BUT I JUST DON'T SEE THAT
2 ANY OF THAT REALLY DRAMATICALLY CHANGES THE LANDSCAPE
3 FROM YOUR CLIENT'S PERSPECTIVE. WHAT IT COMES DOWN TO
4 AT SOME POINT IS YOUR CLIENT WAS GOING TO HAVE TO DEFEND
5 A CLAIM FROM MR. JACOVETTI, AND THE FACT THAT
6 MR. SHARGEL AND MR. YASHAYEV AND FCS WERE ON THE CAPTION
7 FOR A HOT MINUTE DOES NOT REALLY CHANGE THAT.

8 MR. REO: HAD IT BEEN A DEFAMATION CLAIM
9 ONLY FOR MR. JACOVETTI, I THINK IT WOULD HAVE BEEN
10 FAIRLY EASILY DISPOSED OF FOR THE REASONS ARTICULATED IN
11 THE BRIEFS SUBMITTED IN THAT CASE.

12 THE COURT: MAYBE. MAYBE. BUT THEN IT
13 WAS A -- RICO CLAIM FROM MR. JACOVETTI. MR. JACOVETTI
14 WAS NOT OUT TO BOG DOWN -- I HAVE NO REASON BASED ON
15 WHAT I HAVE SEEN TODAY THAT MR. JACOVETTI WAS OUT TO BOG
16 DOWN THE EXECUTION OF THE JUDGMENT IN THE SHELTON CASE.
17 HE WAS NOT IN THE SHELTON CASE.

18 MR. REO: AT AN ABSOLUTE MINIMUM, WE
19 WOULD BE WANTING OUR FEES FOR THIS HEARING TODAY, THE
20 PREPARATION FOR THIS HEARING, AND THERE IS STILL ONE
21 OUTSTANDING RULE 37 FEE PETITION THAT HAS NOT YET BEEN
22 RULED UPON, PENDING.

23 THE COURT: WE ARE GOING TO COME TO THAT
24 IN A MOMENT AT THE END, BUT AS FAR AS FEES GO FOR TODAY,
25 I'M NOT INCLINED TO AWARD FEES FOR TODAY. I UNDERSTAND

1 THE REASON FOR THE REQUEST. I HAVE ORDERED FEES A
2 MULTITUDE OF TIMES IN THIS CASE. I'M NOT PERSUADED THAT
3 THEY HAVE ANY KIND OF REAL IMPACT. THEY PROBABLY
4 FRANKLY DRAW FROM YOUR DWINDLING POT TO THE EXTENT
5 YOU'RE GOING TO SEEK TO RECOVER FOR SOME OTHER BASIS.
6 AND ULTIMATELY IT'S YOUR MOTION. SO I AM NOT INCLINED
7 TO AWARD FEES FOR THE HEARING TODAY.

8 MR. SILVESTRO, I WANT TO GIVE YOU A
9 CHANCE TO WEIGH IN ON REMEDY IF YOU HAVE ANYTHING YOU
10 WANT TO ADD.

11 MR. SILVESTRO: I APPRECIATE IT. AS
12 THERE WAS NOTHING IN YOUR FINDINGS ABOUT ANY WRONGDOING
13 ON BEHALF OF MY CLIENT, I DON'T BELIEVE THAT THERE IS A
14 BASIS FOR SANCTIONING HIM. ESSENTIALLY THAT BEING THE
15 CASE, I DON'T HAVE A DOG IN THIS FIGHT. SO MY OBJECTIVE
16 TODAY WAS ONLY TO PROTECT MR. JACOVETTI AND HIS
17 INTERESTS, AND SINCE THAT HAS BEEN SERVED, I WILL SHUT
18 MY MOUTH.

19 THE COURT: I APPRECIATE THAT. TO BE
20 CLEAR, I WAS NEVER -- I ASKED FOR MR. JACOVETTI TO
21 PARTICIPATE BECAUSE I FELT LIKE HE WAS AN IMPORTANT
22 FACTUAL PIECE HERE. I DID NOT WANT FACTUAL GAPS ON THE
23 RECORD, GIVEN THE SIGNIFICANCE OF WHAT I CONSIDERING.
24 THERE WAS NEVER A CONSIDERATION IN MY MIND OF
25 SANCTIONING HIM. I HAD NOTHING TO SUGGEST THAT THERE

1 WAS ANYTHING SANCTIONABLE ABOUT HIS CONDUCT. IT WAS
2 REALLY -- I CALLED HIM TO BE HERE FOR FACTUAL PURPOSES
3 ONLY. OKAY.

4 MR. THOMAS, LET ME TURN TO YOU AND HEAR
5 WHETHER YOU HAVE ANY THOUGHTS ON REMEDIAL ISSUES BEFORE
6 I TRY TO FASHION SOME SORT OF RULING.

7 MR. THOMAS: I MEAN, OBVIOUSLY I WOULD BE
8 ALMOST ARGUING AGAINST MYSELF BY TRYING TO MAKE ANY
9 SUGGESTIONS. SO OBVIOUSLY TRYING TO SUGGEST ANYTHING
10 WOULD BE ALMOST A SELF-INFLECTED WOUND AT THIS TIME.

11 THE ONLY POSSIBLE THING I CAN THINK OF
12 THAT FRANKLY, OTHER THAN THE FACT THAT THIS CERTAINLY IS
13 A REPUTATIONAL ISSUE AND THE FACT THAT I THINK EVERYONE
14 AT THIS POINT HAS MADE IT EXTREMELY CLEAR THAT THEY ARE
15 PLANNING ON FILING -- THIS ENTIRE PLEADING WAS
16 ESSENTIALLY CRAFTED TO TRY AND SUPPORT THEIR CASE FOR A
17 MALPRACTICE CLAIM, AND THEY HAVE ESSENTIALLY MADE IT
18 CLEAR THAT THAT IS THEIR INTENT.

19 I MEAN BESIDES THAT, THE ONLY OTHER
20 POSSIBLE THING I CAN THINK OF IS SOME SORT OF TEMPORARY
21 INJUNCTION FROM FURTHER PLEADINGS WITHOUT PERMISSION OF
22 YOUR HONOR IN THE -- I GUESS EASTERN DISTRICT. THAT
23 CERTAINLY HAD AN EFFECT PREVIOUSLY. AGAIN, THAT WOULD
24 PROBABLY BE, I WOULD SAY, AT LEAST THE MOST FAIR
25 POTENTIAL REMEDY, GIVEN THE TOTALITY OF THE

1 CIRCUMSTANCES.

2 THE COURT: WELL, AS I HAVE INDICATED, I
3 MEAN, I MADE SOME FACTUAL FINDINGS. I DO THINK THOSE
4 FACTUAL FINDINGS WARRANT SOME SORT OF REMEDY. BUT I
5 ALSO WANT TO BE MINDFUL OF THE RIGHT FORUM FOR VARIOUS
6 REMEDIES THAT MIGHT BE UNDER CONSIDERATION. WE TALKED
7 OBVIOUSLY AT LENGTH FOR THE -- WE TALKED AT LENGTH ABOUT
8 THE FORUM FOR A MALPRACTICE ACTION. I AT LEAST ALLUDED
9 TO THE IDEA THAT THERE IS A PROPER FORUM FOR THE
10 DISCIPLINARY PROCEEDINGS AS WELL.

11 SO HERE IS WHERE WE ARE. I DO THINK
12 THAT, YOU KNOW, POTENTIALLY DISCIPLINARY PROCEEDINGS ARE
13 APPROPRIATE HERE, BUT I DON'T WANT TO OVERSTEP MY BOUNDS
14 AND PRESUME TO SAY THAT THEY DEFINITELY ARE OR THAT I
15 KNOW WHAT THEY SHOULD LOOK LIKE. I HAVE SOME CONCERNS
16 ABOUT WHAT EXACTLY WAS SENT TO THE DISCIPLINARY BAR OF
17 THE VARIOUS BAR ASSOCIATIONS OR THE DISCIPLINARY COUNCIL
18 FOR THE VARIOUS BARS, STATE BARS AND MAYBE FEDERAL
19 COURTS AS WELL.

20 HERE IS WHAT WE ARE GOING TO DO. THERE
21 WILL BE THREE THINGS. MR. THOMAS, I WANT YOU TO ORDER
22 THE TRANSCRIPT FROM THIS PROCEEDING. I WANT YOU TO
23 ORDER IT BY FRIDAY. JUST FILE THE ORDER BY FRIDAY.
24 ONCE THAT TRANSCRIPT HAS BEEN GENERATED, I AM LIKELY TO
25 SEND -- I'M GOING TO SEND IT TO THE VARIOUS DISCIPLINARY

1 COUNSEL WITH MY RECOMMENDATION THAT THEY INVESTIGATE
2 WHAT HAS HAPPENED HERE. THEY MAY DEEM IT LESS SEVERE
3 THAN I DO. THAT IS WITHIN THEIR DISCRETION TO DO, AND
4 THEY WILL SEE THAT IN THIS TRANSCRIPT. BUT I WILL SEND
5 THEM A PACKAGE OF INFORMATION THAT INCLUDES SOME OF THE
6 PRIOR ORDERS THAT I'VE ISSUED AND A COVER LETTER GIVING
7 THEM SOME CONTEXT. I WILL FORWARD IT TO, MECHANICALLY,
8 EITHER THE CHIEF JUDGE OF OUR COURT OR THE DISCIPLINARY
9 COMMITTEE OF OUR COURT. I JUST MECHANICALLY DO NOT KNOW
10 WHICH ONE IS SUPPOSED TO GET IT, AND I WILL SEND IT OUT
11 AS WELL TO OTHERS.

12 THEN I THINK THAT, GIVEN WHAT I HEARD
13 ABOUT THE COMMUNICATIONS WITH THE CLIENTS ABOUT NAMING
14 THEM AS PARTIES IN THIS CASE, I DO THINK SOME
15 RESTRICTIONS ON MR. THOMAS'S ABILITY TO INITIATE CASES
16 IN THIS DISTRICT IS APPROPRIATE. I DON'T WANT TO BE
17 SOME SORT OF SUPERVISING JUDGE FOREVER, BUT I THINK THAT
18 WE WILL PUT IN PLACE AN ORDER THAT FOR THE NEXT YEAR IF
19 MR. THOMAS INTENDS TO FILE ANY NEW CASES IN THIS COURT,
20 HE MUST FIRST SEEK PERMISSION FROM ME TO DO SO AND MAKE
21 AN APPROPRIATE SHOWING OF GOOD CAUSE AND THAT THE
22 PLEADING WILL SATISFY RULE 11 AND THAT HE HAS DONE ALL
23 THE APPROPRIATE INVESTIGATION.

24 AND WHEN I SAY "THIS COURT," JUST TO BE
25 CLEAR, I MEAN THE EASTERN DISTRICT OF PENNSYLVANIA, AND

1 FROM MY PERSPECTIVE THAT INCLUDES THE BANKRUPTCY COURT
2 AS WELL, WHICH IS, ALTHOUGH FUNCTIONS SEPARATELY, IS A
3 UNIT OF THIS COURT:

4 THOSE WILL BE MY THREE ORDERS.

5 YES, MR. THOMAS.

6 MR. THOMAS: TWO VERY QUICK PROCEDURAL
7 QUESTIONS. THAT IS ONLY ONGOING. THAT DOES NOT INCLUDE
8 ALREADY CURRENTLY PENDING CASES?

9 THE COURT: IT DOES NOT INCLUDE CURRENTLY
10 PENDING CASES. IT'S ONGOING CASES. JUDGES WHO HAVE GOT
11 CASES IN FRONT OF YOU WILL DEAL WITH THEM AS THEY SEE
12 FIT.

13 MR. THOMAS: AND THE TRANSCRIPT ORDER.
14 YOU ARE SAYING THAT I WILL ORDER IT, BUT YOU ARE GOING
15 TO DELIVER IT. SHOULD I JUST ORDER IT THE SAME WAY AND
16 THEN IT GETS SENT TO YOU?

17 THE COURT: IF YOU ORDER IT, YOU SHOULD
18 GET A COPY FOR YOURSELF TOO, BUT I BELIEVE THEN IT WILL
19 BE AVAILABLE TO ME ON THE DOCKET.

20 MS. WHITE, IS THAT CORRECT?

21 THE CLERK: YOUR HONOR, YOU WILL GET A
22 COPY.

23 THE COURT: I WILL GET A COPY. THANKS,
24 MS. BUENZLE.

25 SO I WILL HAVE MY COPY, BUT I WANT TO

1 MAKE SURE THAT YOU ARE GETTING A COPY AND THAT YOU ARE
2 ORDERING IT, MR. THOMAS.

3 SO I WILL ISSUE AN ORDER ON THAT TODAY,
4 WHICH WILL PROBABLY JUST LIST OUT THE REMEDIES AND
5 OTHERWISE JUST INCORPORATE THE TRANSCRIPT FOR REASONS.
6 I'M NOT GOING TO WRITE A LENGTHY OPINION GIVEN HOW MUCH
7 TIME WE SPENT ON THIS ALREADY TODAY.

8 THE ONLY OTHER THING I WANT TO TAKE UP
9 WHILE I HAVE YOU ALL IS A HOUSEKEEPING MATTER, TWO OTHER
10 HOUSEKEEPING MATTERS.

11 THERE IS, AS MR. REO JUST REFERENCED, A
12 FEE PETITION THAT IS PENDING. I THINK AT SOME POINT WE
13 WERE TOGETHER AND I HAD INSTRUCTED A RESPONSE TO COME IN
14 A WEEK OR TWO AGO. I DON'T REMEMBER THE EXACT DATE, AND
15 MR. ARTOM-GINZBURG, I DON'T KNOW WHERE THAT STANDS.
16 THERE MAY HAVE BEEN SOME CONFUSION. IT MAY HAVE BEEN
17 LOST IN THE SHUFFLE AS YOU WERE STEPPING IN FOR
18 MR. THOMAS. CERTAINLY, I UNDERSTAND WHY HE WOULD NOT
19 HAVE BEEN THINKING THAT HE WAS THE APPROPRIATE PERSON TO
20 RESPOND TO IT. AND I DON'T KNOW IF IT'S SOMETHING THAT
21 YOU PICKED UP ON. SO I DON'T KNOW WHERE THAT STANDS OR
22 EVEN IF YOU ARE EVEN AWARE OF THAT, MR. ARTOM-GINZBURG.

23 MR. ARTOM-GINZBURG: I WAS AWARE THAT IT
24 HAD BEEN FILED. I WAS NOT SURE OF THE STATUS OF IT AND
25 I BELIEVE WHEN IT WAS FILED MR. THOMAS WAS STILL FILING

1 ON THE DOCKET.

2 ALSO, YOUR HONOR, AS A HOUSEKEEPING
3 MATTER, WILL I RECEIVE A COPY OF THE TRANSCRIPT TOO OR
4 DO I NEED TO ORDER IT SEPARATELY?

5 THE COURT: I THINK YOU WILL NEED TO
6 ORDER IT SEPARATELY, YES. OKAY.

7 SO IS IT YOUR CLIENTS' INTENT TO RESPOND
8 TO THE FEE PETITION, MR. ARTOM-GINZBURG?

9 MR. ARTOM-GINZBURG: I WILL. IF YOUR
10 HONOR WILL SET A DATE, I WILL RESPOND.

11 THE COURT: THAT IS FINE. I THINK,
12 AGAIN, I WANT SOME CLARITY ON THE DOCKET. I UNDERSTAND
13 THAT THIS DOCKET JUST MAY HAVE MUCKED THINGS UP A LITTLE
14 BIT. IT WILL HOLD UP MR. REO'S CLIENT'S FEES FOR A
15 LITTLE BIT, BUT LET'S HAVE YOU RESPOND BY NOVEMBER 20TH,
16 MR. ARTOM-GINZBURG.

17 MR. ARTOM-GINZBURG: WILL THERE BE TIME
18 FOR ME TO HAVE GOTTEN THE TRANSCRIPT BEFORE THEN,
19 BECAUSE I THINK SOME OF THE THINGS HE'S ASKING FOR IN
20 HIS FEE PETITION, I WANT TO REFER TO THE TRANSCRIPT AS
21 TO WHETHER IT WAS SOMETHING THAT MIGHT -- THE FINDINGS
22 FOUND THAT MY CLIENTS KNEW ABOUT OR NOT.

23 THE COURT: WELL, AT THIS POINT WHAT WE
24 ARE TALKING ABOUT IS REALLY JUST THE -- I HAVE AWARDED
25 FEES. I HAVE DETERMINED FEES WERE APPROPRIATE. RIGHT?

1 SO I DON'T WANT TO HEAR ARGUMENT ON THE MERITS. IT'S
2 REALLY THE AMOUNT OF FEES EXPENDED ON THINGS. I DON'T
3 KNOW. WHY DON'T YOU TAKE A LOOK AT THE FEE PETITION
4 THAT IS PENDING. AND YOU KNOW, IF THERE IS SOMETHING
5 YOU NEED AND YOU REALLY THINK -- LOOK AT IT WHILE IT'S
6 RELATIVELY FRESH, WHILE TODAY'S HEARING IS RELATIVELY
7 FRESH. AND THEN IF THERE IS SOME BASIS TO THINK THAT
8 YOU ARE GOING TO NEED THE TRANSCRIPT AND ARE NOT GOING
9 TO HAVE IT, LET ME KNOW. TALK TO MR. REO, SEE IF YOU
10 COULD COME UP WITH AN AGREED-UPON DATE TO RESPOND AND
11 LET ME KNOW.

12 MR. ARTOM-GINZBURG: THANK YOU, YOUR
13 HONOR.

14 THE COURT: THE LAST PIECE OF
15 HOUSEKEEPING I HAVE IS THERE IS A WITHDRAWAL MOTION
16 PENDING FOR MR. THOMAS. I'M GOING TO DEFER RULING ON
17 THAT JUST UNTIL I HAVE THE TRANSCRIPT IN HAND. I WOULD
18 LIKELY GRANT IT AT THAT POINT, BUT I JUST WANT TO CLOSE
19 THE LOOP ON ALL THESE ISSUES BEFORE I DO.

20 MR. REO: FINAL MATTER, YOUR HONOR.

21 THE COURT: YES, MR. REO.

22 MR. REO: TWO MATTERS, ACTUALLY. ONE,
23 WHEN I RAISED THE POSSIBILITY OF FEES FOR THE HEARING
24 TODAY, YOUR HONOR SEEMED TO THINK THAT I WAS SUGGESTING
25 THAT THE FEES BE ASSESSED AGAINST THE CLIENTS WHEN YOU

1 SAID THAT WE WOULD BE SEEKING RECOVERY FROM A
2 DIMINISHING POT. BUT I WAS SPECIFICALLY WANTING THE
3 FEES TO BE ASSESSED AGAINST MR. THOMAS, NOT HIM AND HIS
4 CLIENTS JOINTLY AND SEVERALLY.

5 THE COURT: I UNDERSTAND THAT.

6 MR. REO: I JUST WANTED TO BE CLEAR ON
7 THAT.

8 AND THEN THE 7,029 THAT WAS ORDERED PAID
9 ON OR ABOUT BEFORE SEPTEMBER 15, THAT IS STILL
10 OUTSTANDING, AND THE FEE PETITION THAT YOU ARE
11 REFERENCING THAT THEY CAN BRIEF IF THEY WISH TO IS THE
12 SECOND FEE PETITION THAT HAS NOT YET BEEN RULED UPON.

13 THE COURT: THAT'S RIGHT.

14 MR. REO: I JUST WANTED TO BE CLEAR ON
15 THAT.

16 THE COURT: YES, THAT IS RIGHT. OKAY.

17 WELL, SO I THINK THAT IS EVERYTHING I
18 HAVE. I APPRECIATE ALL YOUR TIME, INPUT TODAY. WE WILL
19 STAND ADJOURNED. THANK YOU, EVERYBODY.

20 (HEARING ADJOURNED AT 5 O'CLOCK.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER

11/13/20

Suzanne White

DATE

OFFICIAL COURT REPORTER

SUZANNE R. WHITE

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I N D E X

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

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EMIL YASHAYEV

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BY MR. ARTOM-GINZBURG

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BY MR. REO

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BY MR. THOMAS

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BY MR. SILVESTRO

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BARRY SHARGEL

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BY MR. ARTOM-GINZBURG

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BY MR. REO

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BY MR. SILVESTRO

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BY MR. THOMAS

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ROBERT JACOVETTI

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BY MR. SILVESTRO

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BY MR. REO

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BY MR. THOMAS

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JOSHUA THOMAS

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BY MR. THOMAS

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BY MR. ARTOM-GINZBURG

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BY MR. REO

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BY MR. SILVESTRO

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